International Labour Conference
84th (Maritime) Session 1996

REPORT II

Revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), and Recommendation, 1958 (No. 109)

INTERNATIONAL LABOUR OFFICE GENEVA

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Second item on the agenda

INTERNATIONAL LABOUR OFFICE GENEVA

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Contents

Introduction 1

I. Proposed Conclusions concerning hours of work, manning and wages for seafarers prepared by the Office for the Tripartite Meeting on Maritime Labour Standards 7

A. Conclusions proposed with a view to a Convention concerning seafarers' hours of work and the manning of ships 7

B. Conclusions proposed with a view to a Recommendation concerning seafarers' wages and hours of work and the manning of ships 10

II. Proceedings of the Tripartite Meeting on Maritime Labour Standards concerning revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), and Recommendation, 1958 (No. 109) 13

Extracts from the report of the Committee on Wages, Hours of Work and Manning 13

Proposed Conclusions concerning the revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109) and Recommendation, 1958 (No. 109) submitted by the Committee 32

Discussion by the Tripartite Meeting on Maritime Labour Standards in plenary sitting 38

III. Proposed texts 41

Proposed texts

A. Proposed Convention concerning seafarers' hours of work and the manning of ships 52

Projet de convention concernant la durée du travail des gens de mer et les effectifs des navires 53

B. Proposed Recommendation concerning seafarers' wages and hours of work and the manning of ships 62

Projet de recommandation concernant les salaires et la durée du travail des gens de mer et les effectifs des navires 63

Annex: Extracts from studies concerning hours of work and hours of rest 73

Introduction

At its 262nd Session (March-April 1995), the Governing Body of the International Labour Office examined the report of the Tripartite Meeting on Maritime Labour Standards (Geneva, November-December 1994) and decided to include an item on the revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109) and Recommendation, 1958 (No. 109) in the agenda of the 84th (Maritime) Session of the International Labour Conference.

It also decided that in accordance with article 38, paragraph (b) of the Standing Orders of the International Labour Conference, the Office would draw up a final report on this item on the basis of the work of the Tripartite Meeting on Maritime Labour Standards. As part of a series of measures to safeguard the financial position of the ILO, the Governing Body at its 263rd Session (June 1995) decided to postpone the holding of the Maritime Session of the Conference scheduled for January 1996. At its 264th Session (November 1995) the Governing Body decided that the Conference should be held at the end of 1996 or at the beginning of 1997.

The background to these decisions is summarized below.

The First Session of the International Labour Conference in 1919 adopted the Hours of Work (Industry) Convention (No. 1) containing the principle of an eight-hour day and a 48-hour week for shore-side industrial and transport workers. International regulations for hours of work for seafarers were first discussed the following year at the Second (Maritime) Session of the International Labour Conference, but the Conference failed to agree on applying the same principle to that sector.

It was not until 1936 that the first instrument on this subject, the Hours of Work and Manning (Sea) Convention (No. 57) was adopted by the 21st (Maritime) Session of the Conference. This Convention, which was based essentially on the eight-hour day for officers and ratings in distant trade ships, laid down the minimum number of such personnel both on deck and in the engine room for certain types of ships. The Conference also adopted the Hours of Work and Manning (Sea) Recommendation, 1936 (No. 49).

Convention No. 57 was ratified by only four countries and never came into force. One of the reasons given for this was that by professing to regulate hours of work and manning and ignoring wages, the Convention tended not to minimize international competition but actually to aggravate the already existing disparity of costs. The 13th Session of the Joint Maritime Commission in 1945 therefore recommended that hours of work, manning and wages should be dealt with in a single new instrument. Essentially that was because those three questions were considered indivisibly linked.

This question was consequently included in the agenda of a Preparatory Technical Maritime Conference held in 1945 and the 28th (Maritime) Session of the International Labour Conference held in Seattle in 1946.

The 1946 Maritime Session agreed that provisions on wages, hours of work and manning should be included in the same instrument, and it adopted the Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76). As regards hours of work, the Convention added new provisions, inter alia, establishing hours of work regulations for "near trade" and "distant trade" ships; limiting the total number of hours in a two-week period — though this did not reflect a strict limit on hours worked — and prescribing a minimum overtime rate of 1.25 times the basic pay or wages per hour. The manning provisions in the new Convention were substantially less detailed compared with Convention No. 57, eliminating detailed provisions on the number of officers and ratings to be carried on specific sizes of ships.

As regards wages, the Conference was fully aware of the difficulty of establishing an international minimum wage and discussed the matter at length. Reference was made in particular to: the fact that there was no universally recognized international standard currency;

the problem of converting a particular currency or currencies into other currencies, especially as regards variances in exchange rates which could take place without any corresponding variation in prices or wages in the country concerned; the fact that seafarers spent a part of their wage in their own country and part of it in various foreign currencies abroad; and the desirability of maintaining some relationship between seafarers' wages and the cost or standard of living of shore workers in the country to which the seafarers belonged. The provision on wages of this Convention expressed the minimum monthly basic wage of an able seaman as either US$64 or £16 sterling.

Despite these changes, Convention No. 76 received only one ratification, and it too did not enter into force.

The question of the possible revision of the Convention was raised shortly thereafter at the 14th Session of the Joint Maritime Commission in 1947. The Commission unanimously adopted a resolution, subsequently approved by the Governing Body, which invited governments to report on why the "Seattle Conventions" had not been ratified.

As a result, a Tripartite Subcommittee of the Commission was convened in 1948 to consider information received from governments and to decide what action might be taken to facilitate ratification. The Subcommittee proposed that the Governing Body should request the International Labour Conference to contemplate the revision of certain Articles of four of the Conventions adopted in 1946, including Convention No. 76.

Despite opposition expressed by shipowners, the Governing Body decided to place the question on the agenda of the 32nd (General) Session of the International Labour Conference in 1949 instead of referring it to a special Maritime Session of the Conference.

The Conference adopted a new instrument, the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93), which contained only two amendments to Convention No. 76. The first amendment altered a provision which prohibited the consistent working of overtime, to provide that this should be avoided whenever possible. The second altered a provision for denunciation of the Convention only after a period of ten years. It was considered that, in view of the instability of many currencies and the uncertainty as to the possible trends of economic development for the next few years, many governments might hesitate to bind themselves for a period of ten years. The Conference therefore decided to reduce this period to five years.

At its 16th Session (1951), the Joint Maritime Commission again considered a report prepared by the Office concerning the progress of ratification of the Conventions adopted in 1946. As recommended by the Commission, the Governing Body, at its June 1951 Session, decided to place the question of a possible revision of Convention No. 93 on the agenda of the Governing Body Committee on Standing Orders and the Application of Conventions and Recommendations.

After further discussion by the Governing Body and the Commission in 1952, member States were requested to provide information concerning: any obstacles which had been encountered by them to the ratifications of Convention No. 93; whether those obstacles were the same as had been reported to the Office in 1948 with reference to Convention No. 76; whether it was considered that ratification of Convention No. 93 would be facilitated if the Convention were divided into parts which could be ratified separately; and whether the Convention would require more extensive revision to make it acceptable.

Some countries replied that it was not government policy to regulate such general working conditions as hours or wages. Others had objections to provisions in the Convention relating to the definition of minimum wages. The difficulty of applying wage provisions in the Convention because of currency exchange rate fluctuations and the problem of countries having large numbers of their seafarers employed in foreign flagships — which called for simultaneous ratification of the Convention by all countries — were other issues raised in the replies.

In 1954, a Tripartite Subcommittee of the Joint Maritime Commission on Hours of Work and Manning in the Short-Sea Trades of North-West Europe was convened to discuss, inter alia, hours of work and manning in the *short-sea* trades for that region. The Subcommittee concluded that the problem was of a general character and not only confined to the North-Western trades. It recommended that the Commission should again consider the need for revising Convention No. 93 with particular reference to conditions of seafarers in ships of smaller tonnage, whether at present within or outside the scope of the Convention. By this time, Convention No. 93 had four ratifications (at present it has six).

Based on recommendations of the Commission at its 18th Session in 1955, a Preparatory Technical Maritime Conference was held in London in 1956 to examine these issues. The Preparatory Conference recommended that a tripartite Working Party of six members from each of the three groups should meet to examine the possibility of submitting draft proposals designed to secure general agreement at the Maritime Session of the Conference.

The Working Party met in Geneva in April 1957 and agreed that the best approach would be to prepare a draft Recommendation, to be considered by the Maritime Session of the Conference, in addition to the proposed draft revised Convention agreed by the Preparatory Conference. The Working Party felt that in this way Members which might be unable to ratify the Convention might be encouraged, nevertheless, to accept and implement the Recommendation.

The Governing Body approved this proposal and decided to include on the agenda of the 41st (Maritime) Session of the International Labour Conference in 1958 and item concerning "General revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)".

The Conference Committee set up to deal with this item adopted a revised Convention by a vote of 156 to 105, with 42 abstentions (all Shipowners' members voted against, all Seafarers' members voted for and, of Government members, 51 voted and 42 abstained). The Committee also adopted a supplementary Recommendation by a vote of 267 to 0, with 36 abstentions. The Conference then adopted these instruments as the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), and Recommendation, 1958 (No. 109).

The first ILO meeting held after adoption of the Convention and the Recommendation at which the issues of wages, hours of work and manning were discussed was the 19th Session of the Joint Maritime Commission (1961), which had on its agenda, inter alia, an item on "Manning of ships". The Commission adopted a resolution concerning hours of work on board ship which noted with regret that, although more than three years had passed since Recommendation No. 109 had been adopted, very few countries had informed the ILO of any steps taken to implement it. The Commission requested the Governing Body to bring this to the attention of member States. The Commission also recommended that the Second Asian Regional Maritime Conference to be held in 1965 should examine the extent to which the Recommendation had been applied in relation to Asian seafarers. That Conference had noted that only a few Asian countries had taken the required action concerning the Recommendation and concluded that member States should inform the Office of their national law and practice in regard to the questions dealt with in Recommendation No. 109 and that this information should be discussed by an early session of the Joint Maritime Commission.

The 20th Session of the Commission (1967) recommended that, because of the fact that the value of money had decreased and devaluation had diminished the purchasing power of some seafarers in foreign ports, the wage figures of £25 sterling or US$70, agreed in 1958, should be revised having regard solely to the fall in the value of money since that time.

The Preparatory Technical Maritime Conference held in 1969 recommended an upward revision of the wage figure prescribed by Recommendation No. 109 to £38 sterling or US$91, and the 55th (Maritime) Session of the Conference, held in 1970, adopted a resolution which updated the wage figure to £42 sterling and US$100. The Conference also urged the Governing

Body to invite the Joint Maritime Commission, at its next and each subsequent session, to review the question and indicate the wage figures it judged at that time to be the equivalent of the figures given in the Recommendation, taking into account only the reduced value of money.

Since 1970, the Commission has discussed the wage figure at each of its sessions and, at all but its 24th Session, updated it. At its 24th Session, in 1984, it discussed a report prepared by the Office on the general principle of minimum wage fixing in relation to the part of the Recommendation concerning wages. The Commission adopted a resolution which noted that the formula used to determine data on changes in the purchasing power of the United States dollar in various countries as a basis for revising the wage figures of Recommendation No. 109 was unsuitable owing to fluctuations in currency exchange rates and varying levels of consumer price inflation in different countries. The 25th Session of the Commission in 1987 updated the wage figure and again called for various forms of action by the Office on the subject of the minimum basic wage of able seamen, including improvement of the procedure for updating the wage figure. The agenda of the 26th Session of the Commission in 1991 included an item concerning: "Wages, Hours of Work and Manning (Sea) Recommendation, 1958 (No. 109): (a) mechanism and procedure for the periodic revision of the minimum basic wage for able seamen; (b) minimum pay or wages for able seamen in ships employing extra numbers of ratings; and (c) possible updating of wage figures". The Commission also dealt with the question of possible revision of Convention No. 109 and Recommendation No. 109 and it adopted a resolution concerning the revision of these two instruments. The resolution, inter alia, recalled the report of the Eighth Session of the Joint IMO/ILO Committee on Training which had recommended that consideration be given to a revision of ILO Convention No. 109 to bring it into line with modern work practices, to ensure that it reflected the importance of the fatigue factor in the manning and safety of ships and to incorporate certain principles embodied in resolutions adopted by the IMO, notably Assembly resolution A.481(XII) on the principles of safe manning, and which had also called for a revision of ILO Recommendation No. 109. The Commission therefore recommended that revision of Convention No. 109 and Recommendation No. 109 be placed on the agenda of the next Maritime Session of the International Labour Conference.

The Governing Body, at its 252nd Session (March 1992), took note of the resolution concerning possible revision of Convention No. 109 and Recommendation No. 109 as well as another resolution adopted by the Commission concerning the convening of a Preparatory Technical Maritime Conference and a Maritime Session of the International Labour Conference. At its 253rd Session (May-June 1992), the Governing Body, following consultations with the leaders of the Shipowners' and Seafarers' groups of the Commission, decided to hold a tripartite meeting instead of a Preparatory Maritime Conference during the 1994-95 biennium. At its 254th Session (November 1992), the Governing Body decided to include in the programme of sectoral meetings for the 1994-95 biennium a Tripartite Meeting on Maritime Labour Standards with an agenda including, inter alia, an item on the "Revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), and Recommendation, 1958 (No. 109)". Technically, the purpose of the meeting was the same as that of a Preparatory Technical Maritime Conference.

The report[1] prepared for that meeting reproduced the substance of the information provided by governments on recent developments. It also contained Proposed Conclusions reflecting the seafarers' wages, hours of work and manning worldwide and taking account of the views of the Joint Maritime Commission. These Proposed Conclusions are set out in Chapter I of this report.

[1] ILO: *Revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), and Recommendation, 1958 (No. 109)*, Report II of the Tripartite Meeting on maritime Labour Standards, Geneva 1994.

Following discussion of the Office report, the Tripartite Meeting on Maritime Labour Standards adopted a revised set of Conclusions with a view to adoption of a new Convention and Recommendation. The proceedings of the Tripartite Meeting on Maritime Labour Standards on this item, including the relevant extracts from the report of the Committee set up to examine this question, the Proposed Conclusions submitted by that Committee and a summary of the corresponding plenary discussions are contained in Chapter II. Chapter III includes both the English and French versions of a proposed Convention concerning seafarers' hours of work and the manning of ships and a proposed Recommendation concerning seafarers' wages, hours of work and manning based on the Conclusions adopted by the Tripartite Meeting on Maritime Labour Standards as well as an explanation of the changes brought by the Office in those texts. If the Conference so decides, Chapter III may serve as the basis for the discussion of this item.

The Joint Maritime Commission met in its 27th Session in Geneva on 9 December 1994 (immediately following the Tripartite Meeting on Maritime Labour Standards). Inter alia, the Commission agreed that the figure of US$385 should be regarded as the equivalent as of 9 December 1994, of the wage figure mentioned in Recommendation No. 109. It urged member States to apply with effect from 1 January 1995, the figure of US$385 in substitution for the wage figures contained in that Recommendation. The Governing Body, at its 262nd Session (March-April 1995) took note of the Commission' report.

The Committee on Wages, Hours of Work and Manning of the Tripartite Meeting requested (see Chapter II, extracts of the Committee's report, paragraph 188) that the Office undertake research and studies on the links between work fatigue and make the results available for the discussion at the forthcoming Maritime Conference.

Due to the very limited time available between the Tripartite Meeting and the preparation of this report, the Office was unable to conduct any research of its own. However, since the Tripartite Meeting it has received the report on the review and revision of the safe manning regulations which had been commissioned in 1994 by Transport Canada. Since the findings of the report may be pertinent to the work of the Conference, the Office has prepared extracts from its executive summary and has included these in Annex 1 of the report. In addition the Office has also provided extracts from two earlier studies — one prepared for the United Kingdom and one for the United States.

I. Proposed Conclusions concerning hours of work, manning and wages for seafarers prepared by the Office for the Tripartite Meeting on Maritime Labour Standards

A. Conclusions proposed with a view to a Convention concerning seafarers' hours of work and the manning of ships

1. A new international instrument concerning seafarers' hours of work and the manning of ships should be adopted.

2. The instrument should take the form of a Convention.

3. The instrument should contain a Preamble referring to the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109) and its accompanying Recommendation (No. 109), and the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), as well as the International Maritime Organization's International Convention for the Safety of Life at Sea, 1974, as amended, and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and Assembly resolution A.481(XII) on principles of safe manning, adopted on 19 November 1981 by the Assembly of the Intergovernmental Maritime Consultative Organization.

1. Scope and definitions

4. The proposed Convention should apply to every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member for which the Convention is in force and is ordinarily engaged in commercial maritime navigation. The Convention should not apply to fishing vessels.

5. Each Member should determine by national laws or regulations, after consultation with the representative organizations of shipowners and seafarers, which ships registered in its territory are to be regarded as seagoing ships for the purposes of the Convention.

6. For the purposes of the Convention:

(a) the term "seafarer" should mean any person who is employed in any capacity on board a seagoing ship to which the Convention applies;

(b) the term "hours of work" should mean time during which a seafarer is required by the orders of a superior to do work on account of the ship or the owner;

(c) the term "hours of rest" should mean time during which a seafarer is not required by the orders of a superior to do work on account of the ship or the owner;

(d) the term "competent authority" should mean the minister, government department or other authority having power to issue regulations, orders or instructions having the force of law in respect of seafarers' hours of work or rest or the manning of ships.

7. The competent authority should, after consultation with the organizations of shipowners and seafarers concerned, determine, for the purposes of the definitions of hours of work and hours of rest, how the following activities should be treated:

(a) musters, fire, lifeboat and similar drills;

(b) activities for the purposes of customs or quarantine or other health formalities;

(c) activities that the master deems to be necessary and urgent for the safety of the ship, cargo or persons on board; and

(d) activities required by the master for the purpose of giving assistance to other ships or persons in distress.

8. (1) A Member which ratifies the Convention may, after consultation with the representative organizations of shipowners and seafarers concerned, exclude wholly or partly from its application masters, chief engineers or chief officers who do not normally stand watch, when such application would raise special problems of a substantial nature.

(2) A Member which avails itself of the possibility provided for in paragraph (1) above should, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, indicate the occupations thus excluded and the reasons.

II. Seafarers' hours of work and manning of ships

9. (1) At sea and in port the normal hours of work for seafarers should be eight hours per day.

(2) Seafarers should be entitled to an uninterrupted period of 24 hours of rest in each week.

(3) Exceptions to the provisions of paragraphs (1) or (2) may be permitted, after consultation with the organizations of shipowners and seafarers concerned, to take account of the frequency and length of leave periods and the granting of compensatory leave, as well as of the special situations of watch-standing seafarers and seafarers who work aboard ships on short voyages.

10. (1) A member State which has ratified the Convention should have laws and regulations which fix either:

(a) a maximum number of hours which may be worked in a given period of time within the following limits:

(i) 14 hours a day;

(ii) 72 hours per week; and

(iii) 130 hours within a two-week period; or

(b) a minimum number of hours of rest, within the following limits:

(i) the hours of rest should be a minimum of ten hours per day, of which at least six hours should be uninterrupted; and

(ii) a minimum of 84 hours per week.

(2) A Member may, in special cases and after consultation with the representative organizations of shipowners and seafarers concerned, authorize exceptions to the maximum hours of work or the minimum hours of rest as provided in paragraph (1) above if an average of fewer hours of work or more hours of rest is ensured over a longer period.

11. A Member which ratifies the Convention should ensure that no person under the age of 16 years should work at night. For the purpose of this point, "night" should mean a period of at least nine consecutive hours, including the interval from midnight to 5 a.m.

12. Nothing in the Convention should be deemed to impair the right and duty of the master of a ship to require a seafarer to perform any work deemed by the master to be necessary for the safe and efficient operation of the ship or for assistance to other ships or persons in distress.

13. Seafarers should, as far as is reasonably practicable, ensure that they obtain adequate rest during periods allocated for that purpose by the master or, in the case of the master, during periods off duty.

14. (1) The master or persons authorized by the master should maintain records of the hours of work or hours of rest for all seafarers on board ship. The record should contain time sheets stating the hours worked or hours rested, as well as time spent on the activities listed in point 7. The time sheets should be signed by the seafarer and by the master or a person authorized by the master.

(2) Hours of work or hours of rest should be recorded at intervals not exceeding two weeks.

(3) The record or a signed copy of the record should be available for maritime labour inspection at any time.

(4) The master should in all cases sign the ship's official record.

15. The competent authority should ensure that the records of hours worked or hours rested are periodically and regularly examined for purposes of maritime labour inspection.

16. If the records or other evidence indicate infringement of provisions governing hours of work or rest, the competent authority should ensure that changes to the manning of the ship or otherwise are made so as to avoid future infringements.

17. (1) Every ship to which the Convention applies should be sufficiently and efficiently manned, in accordance with the minimum safe manning document issued by the competent authority.

(2) When determining or approving manning levels, the competent authority should take into account the need to limit fatigue, to avoid or minimize, as far as practicable, excessive hours of work and to ensure sufficient rest.

18. (1) A Member should undertake to maintain efficient machinery for the investigation and settlement of any complaint or dispute concerning the manning of a ship or to satisfy itself that such machinery exists.

(2) Representatives of the organizations of shipowners and seafarers should participate in the operation of such machinery.

III. Application

19. A Member which ratifies the Convention should be responsible for the application of its provisions to ships registered in its territory by means of laws or regulations, except where effect is given by collective agreements, arbitration awards or court decisions.

20. A Member which ratifies the Convention should:

(a) take all necessary measures, including the provision of appropriate sanctions and corrective measures, to ensure the effective enforcement of the provisions of the Convention; and

(b) have appropriate inspection services to supervise the application of the measures to be taken in pursuance of the Convention and provide them with the necessary resources.

IV. Final provisions

21. This Convention should revise the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93), the Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76), and the Hours of Work and Manning (Sea) Convention, 1936 (No. 57).

B. Conclusions proposed with a view to a Recommendation concerning seafarers' wages and hours of work and the manning of ships

22. A new instrument concerning seafarers' wages and hours of work and the manning of ships should be adopted.

23. The instrument should take the form of a Recommendation.

24. The instrument should contain a Preamble referring to the Protection of Wages Convention, 1949 (No. 95), the Wages, Hours of Work and Manning (Sea) Convention (Revised) (No. 109), and its accompanying Recommendation (No. 109), the Minimum Wage Fixing Convention, 1970 (No. 131), the Seafarers' Annual Leave with Pay Convention, 1976 (No. 146), the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), and the International Convention on Maritime Liens and Mortgages, 1993.

I. General

25. The provisions of the proposed Recommendation should be applied in conjunction with those of the proposed Convention.

II. Scope and definitions

26. The Recommendation should apply to every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member and is ordinarily engaged in commercial maritime navigation. The Recommendation should not apply to fishing vessels.

27. Each Member should determine by national laws or regulations, after consultation with the representative organizations of shipowners and seafarers, which ships registered in its territory are to be regarded as seagoing ships for the purposes of the Recommendation.

28. For the purposes of the Recommendation, the term "basic pay or wages" means the seafarer's basic cash remuneration, without counting any additional remuneration payable in cash, such as overtime payments, premiums or allowances, or in kind, such as food.

III. Hours of work and manning

29. A Member should, after consultations with representative organizations of shipowners and seafarers, apply the provisions of the proposed Convention.

IV. General provisions concerning seafarers' wages

30. (1) At sea and in port, the normal hours of work for seafarers for the purpose of calculating wages should not exceed eight hours per day. In the case of smaller ships and of ships engaged in short voyages, collective agreements or national laws or regulations may provide for the averaging of working hours over a two-week period to achieve an average of not more than eight hours per day.

(2) Time worked in excess of the normal hours of work per day should be regarded as overtime.

31. (1) The rate or rates of compensation for overtime and for work performed on the weekly day of rest should be prescribed by national laws or regulations or by collective agreement, but the hourly rate of compensation should be at least one and one-half times the basic pay or wages per hour.

(2) The rate or rates of compensation should increase relative to the number of hours worked above the normal hours of work.

32. National laws or regulations or collective agreements may provide for compensation in respect of overtime or work performed on the weekly day of rest by at least equivalent time off duty and off the ship or additional leave in lieu of cash payment, as well as by increased rates of compensation.

33. The following principles should be taken into account by the competent authority, in consultation with the representative organizations of seafarers and shipowners, when establishing laws or regulations concerning the wages of seafarers:

(a) the principle of equal remuneration for work of equal value should apply to all seafarers employed upon the same ship without discrimination based upon race, colour, sex, religion, political opinion, national extraction or social origin;

(b) the amount of wages or wage rates should be specified in the articles of agreement. The articles of agreement should be carried on board the ship, and at least one signed copy of the information which pertains to each seafarer should be given to the seafarer in a language which he or she understands;

(c) wages should be paid in legal tender or, where appropriate, by bank cheque, postal cheque or money order;

(d) wages should be paid at regular intervals, and on termination of engagement all remuneration due should be paid within a reasonable time;

(e) wages should be paid directly to the seafarer unless he or she requests otherwise;

(f) the shipowner or the employer should impose no limit on the seafarer's freedom to dispose of his or her remuneration;

(g) deductions from remuneration should be permitted only if:

  (i) there is an express provision therefor in national laws or regulations or in an applicable collective agreement;

  (ii) the seafarer has been informed, in the manner deemed most appropriate by the competent authority, of the conditions for such deductions;

  (iii) a maximum overall percentage that deductions, attachments and assignments may represent of a seafarer's remuneration has been fixed; and

  (iv) no deductions are made in respect of obtaining or retaining employment;

(h) the competent authority should have the right to inspect stores and services provided on board ship to ensure that fair and reasonable prices are applied and that they are operated not for purposes of making profit but for the benefit of the seafarers concerned; and

(i) to the extent that seafarers' claims for wages and other sums due in respect of their employment are not secured in accordance with the provisions of the International Convention on Maritime Liens and Mortgages, 1993, such claims should be protected by a privilege in accordance with the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).

34. A Member should undertake to maintain efficient machinery for the investigation and settlement of any complaint or dispute concerning seafarers' wages. Representatives of the organizations of shipowners and seafarers should participate in the operation of such machinery.

V. Provisions concerning minimum wages for seafarers

35. (1) Where appropriate, a Member should, after consulting representative organizations of shipowners and seafarers, establish machinery for determining minimum wages for seafarers, without prejudice to the principle of free collective bargaining.

(2) When establishing such machinery, due regard should be given to international labour standards concerning minimum wage fixing, and in particular the following principles:

(i) the level of minimum wages should take into account the nature of maritime employment and seafarers' normal hours of work;

(ii) consultation of shipowners' and seafarers' organizations or representatives should be ensured at regular intervals to adjust the level of minimum wages to changes in the cost of living and in the needs of seafarers and other economic factors;

(iii) the competent authority should ensure, by means of a system of supervision and sanctions, that remuneration is paid at not less than the rate or rates fixed; and

(iv) the competent authority should ensure that any seafarer who has been paid at a rate lower than the minimum rate is enabled to recover, by an inexpensive and expeditious judicial or other procedure, the amount by which he or she has been underpaid.

VI. Minimum monthly basic pay or wage figure for able seamen

36. For the purposes of this part of the instrument, the term "able seaman" means any seafarer who, by national laws or regulations, or in their absence by collective agreement, is deemed to be competent to perform any duty which may be required of a rating serving in the deck department, other than the duties of a leading or specialist rating.

37. After any permissible deductions have been made, the minimum cash wages which may be determined in pursuance of point 35 for a calendar month of service for the normal hours of work of an able seaman should be not less than US$356 or £196 sterling as of 25 October 1991, or any updated figure recommended by the Joint Maritime Commission or any other body of the International Labour Organization authorized by its Governing Body to recommend such a figure.

38. The proposed Recommendation should revise the Wages, Hours of Work and Manning (Sea) Recommendation, 1958 (No. 109).

II. Proceedings of the Tripartite Meeting on Maritime Labour Standards concerning revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), and Recommendation, 1958 (No. 109)

Extracts from the report of the Committee on Wages, Hours of Work and Manning

1. The Committee on Wages, Hours of Work and Manning was set up by the Meeting at its first sitting on 28 November 1994. It was originally composed of 26 Government members, 17 Shipowner members and 18 Seafarer members ...

2. The Committee elected its Officers as follows:

Chairperson: Mr. W. Ohndorf (Government member, Germany).

Vice-Chairpersons: Mr. D. Lindemann (Shipowner member, Germany); and Mr. B. Orrell (Seafarer member, United Kingdom).

Reporter: Cdr. S. Glover (Government member, United States).

3. At its sixth sitting the Committee appointed a drafting committee ... At its fourth and fifth sittings the Committee set up working groups, ...

4. The Committee held nine sittings ...

Introduction

5. The representative of the Secretary-General welcomed the delegates. He recalled that the purpose of the Meeting was to discuss the second item on the agenda of the Tripartite Meeting on Maritime Labour Standards — i.e., the revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), and its accompanying Recommendation (No. 109). After providing some general information about administrative and organizational matters, he invited the Chairman to take the floor.

6. The Chairman thanked the Committee for having elected him to chair the Meeting. Noting that the work would have to be carried out expeditiously if all the items for discussion were to be covered adequately, he proposed a timetable for the discussion of the 38 paragraphs which constituted Chapter V of the report.

7. A representative of the Secretary-General summarized the main features of the report which had been prepared by the Office to serve as a basis for the Committee's discussion on the revision of Convention No. 109 and Recommendation No. 109. The introduction of the report traced the history of initiatives for elaborating instruments concerning hours of work and wages of seafarers, and the manning of ships, which culminated in the adoption of Convention No. 109 and Recommendation No. 109 in 1958. It also described the processes through which the possible revision of those instruments became an item on the agenda of the present Maritime Meeting. Chapter I provided an overview of activities at the international level since 1958, which were of relevance to the revision of the aforementioned instruments. Chapters II and III gave a review of national law and practice in different countries with regard to wages, working time and the manning of ships, based on information contained in the replies to a questionnaire which was sent out by the Office. In Chapter IV, the possible form and substance of revised instruments dealing with wages, hours of work and the manning of ships were outlined, essentially on the basis of the information provided by respondents to the questionnaire. The reasons for which the Office proposed that the question of "maximum hours of work or minimum hours of rest" should be dealt with in a Convention, while the issue of wages should be covered by a Recommendation, were put forward in that chapter. The Proposed Conclusions,

which were to provide the basis for the discussions of the Committee, were set out in Chapter V. Taking into consideration the views generally expressed by respondents to the questionnaire, the Office had proposed an instrument that would be less complex and less detailed than Convention No. 109. The provisions of a revised instrument would encompass such issues as "limits on hours of work" or "minimum periods of rest", "record-keeping" and the "general application of limits on the hours of work of all seafarers". However there would also be provisions for flexibility in handling those issues, as long as this was accomplished through tripartite consultation and resulted in equivalent or greater rest periods for seafarers. The standard of an eight-hour normal working day was retained. As regards the monitoring of the effect given to the proposed Convention, the role and functions of the competent authority were to be clearly specified. The manning of ships would not be dealt with in detail. It was proposed that the subject of "wages" be covered by a Recommendation. In conclusion, he noted that the inclusion of provisions concerning, for example, the "protection of wages" and the setting of "minimum wages for seafarers", based on the ILO's recommended minimum wage for able seamen, would make the proposed Recommendation more comprehensive than Convention No. 109 and Recommendation No. 109.

8. Noting that because of the lack of sufficient ratifications, Convention No. 109 had not come into force, the Chairman expressed the hope that the work to be undertaken by the Committee would be fruitful, lead to further discussions in the plenary and result in the number of ratifications which would enable a revised instrument to come into effect.

General discussion

9. The Shipowner Vice-Chairman, speaking on behalf of his group, congratulated the Chairman and Seafarer Vice-Chairman on their election, and assured the Chairman of the Shipowners' support in carrying out the work of the Committee. He acknowledged that the item for discussion was an extremely difficult one and he went on to trace the evolution of the debates on the questions of wages and hours of work for seafarers, which dated back to the first ILO Maritime Conference. He recalled the abstention of the Shipowners' group in 1958 in the final vote on the adoption of Convention No. 109. It was with some reservation that the Shipowners had agreed at the 1991 Joint Maritime Commission to participate in efforts to negotiate new instruments. He said that they were, however, determined to make a real effort, in the hope that initiatives with regard to the new instruments would be more successful. The success of the revised instruments would depend on the extent to which they met certain basic requirements. They must be straightforward and restricted to laying down broad principles. The provisions regarding wage rates must be flexible. Those pertaining to hours of work must be such that they could be applicable to different types of ships, to ships engaged in different types of trade, and to ships with different arrangements as regards manning. The Committee, he said, must recognize that safety and the successful operation of ships depended on the manner in which the three main issues to be covered by the revised instruments were balanced. In the Shipowners' view, standards governing hours of work or rest, in a proposed Convention, should be based only on considerations relating to the safe operation of ships and the health of seafarers. Matters relating to that which constituted "normal" daily working hours and overtime fell into the domain of "wages" and should therefore be confined to the proposed Recommendation. His group had reservations as regards the texts proposed by the Office on the question of wages. The general assumption that all seafarers got a basic wage and earned overtime pay at an hourly rate was outdated: most now received remuneration that was either fully or partly consolidated and inclusive of overtime and other allowances. The Shipowners intended to submit amendments in that regard. He ended by stating that, if in the absence of consensus, voting on certain issues were to become necessary, participants voting in favour of a new instrument should assume the commitments that would derive from such a vote. New

standards could only be meaningful, effective, and enjoy widespread support if they resulted from reasonable, workable proposals.

10. The Seafarer Vice-Chairman extended his congratulations to the Chairman and Shipowner Vice-Chairman on their election. His group was in favour of a Convention that would be ratified and implemented and full efforts would be made to achieve that objective. He stressed the importance of taking into account the reality of the life of seafarers and having provisions that reflected and responded to that reality. The shipping industry had undergone significant changes over the years. There was both greater casualization of seafarer employment and exploitation of the workforce. Recent statistics on accidents, pollution, loss of lives and loss of ships underlined the decline in standards, despite intensive discussions on how to improve matters. Growing arguments in favour of reducing costs and crews ignored the problems of stress and fatigue among seafarers. A fundamental issue that was being ignored was the effect of stress and fatigue of seafarers on safety. Safety, he said, had a price which could be met through fewer losses of lives and ships. He welcomed the separation of subjects concerning the hours of work and manning from that of wages, and commended the Office on the comprehensiveness and conciseness of the report which contained useful proposals for a new Convention and Recommendation. His group was of the opinion, however, that the questions of stress and fatigue had not been adequately addressed in the report and foreshadowed efforts to redress that during the deliberations. A Convention that was too broad but meaningless in real terms would be as bad as having one that was not ratified. Details regarding hours of work and rest would have to be examined carefully, since they were critical to the reduction of stress, fatigue and exploitation. The Seafarers would be looking for better definitions of "seafarer", "ships" and "work". The concept of "shipowner" would also need to be clarified, particularly in the light of changes taking place in the industry. The proposal to exclude "fishermen" from the discussion would also need to be examined and a thorough treatment of that issue would be sought. The speaker singled out paragraph 10 of Chapter V as a key issue. The exclusions it contained were too broad. He welcomed the continued concept of recording working hours since empirical data were necessary for changes to be made. The question of manning, however, was not adequately addressed and the Seafarers would seek to expand it. The Seafarers' group did not share the view expressed by the Shipowner Vice-Chairman that most remuneration was consolidated. The speaker welcomed the principle of non-discrimination contained in paragraph 33(a) of Chapter V. He reiterated the importance of dealing with fatigue and stress and suggested that it could be useful to refer to other relevant instruments when formulating the Convention.

11. The Government member of Germany and subsequent speakers associated themselves with the congratulations already extended to the Chairman and Vice-Chairmen on their election, and welcomed the revision of Convention No. 109. Germany attached great importance to the work of the ILO, and the initiatives to raise the minimum living and working standards of seafarers were most welcome. The report was a good basis for discussion. The proposal to have wages and wage-setting dealt with separately, in a Recommendation, would go a long way to removing some of the obstacles that had prevented Germany from ratifying Convention No. 109, although the proposals were not in line with the country's law and practice, since wage-setting was determined through free collective bargaining. While the removal of many of the detailed provisions of Convention No. 109 was a positive move, further pruning was still required if consensus was to be achieved and a ratifiable instrument developed.

12. The Government member of Denmark stressed the importance of protecting seafarers' social needs and safety. Working conditions at sea differed from those on land and industry-specific standards were therefore warranted. The lack of ratifications of Convention No. 109 showed that more practical, more realistic provisions were necessary. In Denmark, only hours of rest were protected by law. New regulations should ensure seafarers obtained adequate time for rest and sleep, whereas hours of work should be negotiated by the social partners.

13. The Government member of France noted the importance of reducing excessive duration of work and fatigue of seafarers which contributed to the safeguarding of life at sea and of ensuring the safety of shipping in general, but the ILO's standards must be universally accepted and applied if they were to be meaningful. He supported the Seafarers' group's comments on the need to revise the definitions of "seafarer", "daily rest" and "overtime". He also suggested that there be a distinction between different types of navigation.

14. The Seafarer member of Sweden drew attention to the question of "periods of responsibility" (e.g. work and duties in the engine room) and the problem of fatigue. That issue had been the subject of discussion in other fora such as the Joint Maritime Commission and the IMO/ILO Joint Committee on Training. During the unmanned period, the engineer officer on duty did not need physically to be present in the engine room. That, according to Chapter II, Regulation III/1 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78), was what was meant by the term "watch" as it applied to engineer officers. In Sweden, the collective agreement that applied to engineer officers restricted those periods of responsibility. Unfortunately, the information provided by the Government of Sweden concerning that special type of watchkeeping was not reflected in the conclusions of the report. The new Convention should take account of modern work practices, including the aforementioned watchkeeping arrangements.

Proposed Conclusions concerning seafarers' hours of work and the manning of ships

15. The Committee had before it 118 amendments to the Proposed Conclusions. The points referred to below concerned those contained in Chapter V "Proposed Conclusions concerning hours of work, manning and wages" of Report II: Revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), and Recommendation, 1958 (No. 109) Document TMMLS/1994(11), which was the working document of the Committee.

Point 3

16. The Seafarer Vice-Chairman stated that the Preamble of the proposed Convention should refer to other relevant international instruments, including those under revision, that were the outcome of valuable work already done in the field. He proposed the addition of two Assembly resolutions of IMO that had been adopted since the report was prepared.

17. The Shipowner Vice-Chairman had no objection to references to other relevant instruments, but reference to texts which were still under revision could pose problems since the final texts were not yet available. He also suggested that the words "so far as they relate to this Convention" be included, since certain of the instruments mentioned also covered other issues that fell outside the scope of the proposed Convention.

18. While the Seafarer Vice-Chairman was of the view that instruments under revision would be finalized by the time work on the Convention was completed, he accepted the suggestion made by the Shipowner Vice-Chairman.

19. In response to the concerns expressed with regard to references to instruments under revision, the Chairman suggested that the words "as revised" be put in square brackets.

20. Point 3, as amended, was adopted.

I. Scope and definitions

Point 4

21. Following a preliminary discussion concerning the application of the Convention, during which the Government member of France called for a clear definition of "seafarer", the Seafarer Vice-Chairman referred to amendments concerning the registration of ships and the flags under which they sailed, and the Government member of Germany said that the question

of registration was important for her country and was also dealt with in points 5 and 19. It was decided to refer the matter to the working group.

22. In response to a question from the Government member of Germany, the Legal Adviser said the issue required further consideration by the Office and a written reply would be given after the end of the meeting. He noted that the United Nations Convention on Conditions for the Registration of Ships contained useful guidelines in that regard.

23. The Chairman informed the Committee that the working group had decided to place the words "registered in the territory" in square brackets, on the understanding that the Office would prepare a note on that question in time for the Maritime Conference.

24. The Government member of Liberia was of the view that there was no need to place the words "registered in the territory" in square brackets because it was clear that the "territory of registration of ship" took precedence over the "territory" under whose flag a ship was permitted to operate (such as bareboat charter arrangements) and that the responsible State was the territory where the ship was registered. He reiterated that the Convention on Liens and Mortgages had provisions on this matter, to deal with questions concerning the responsibility of the State of registration and the bareboat charter State.

25. In view of the fact that bareboat chartering is being encouraged particularly in developing countries, the Government member of India suggested that this be taken into consideration by the Committee when deciding on the applicability of the Convention, and he supported the views of the Government member of Liberia.

26. Supporting the idea of a paper being prepared for the consideration of member States before the next Maritime Conference, the Government member of Germany called for IMO instruments to be taken into account. Member States would have to bear in mind not only national legislation but also the obligations they had assumed when they ratified those international instruments.

27. The Government member of the Islamic Republic of Iran proposed to subamend paragraph 4 so that it referred to wooden vessels of "traditional" build.

28. Paragraph 4, as subamended, was adopted.

29. The Committee requested a written report by the Office on the question of the registration of ships to be available before the next Maritime Conference.

Point 5

30. As a consequence of the agreement on point 4, point 5 was deleted.

Point 6

31. The Committee had received 11 amendments to point 6.

32. The definition of seafarer in subparagraph (a) was referred to the working group which recommended that the term should be defined at the national level.

33. The Government member of Mexico queried the use of the words "o marinos" in the Spanish text.

34. Point 6(a), as amended, was adopted.

35. The Government member of Mexico submitted an amendment, which was seconded by the Government member of Panama, to replace the text of paragraph 6(b) with "the term 'hours of work' should mean time during which a seafarer is required to do work on board ship". He argued that, with the exception of the captain of a ship, who received orders from the owner, all seafarers on board got orders from those senior to them. Consequently, the reference to "orders of a superior" seemed superfluous.

36. An amendment put forward by the Shipowner Vice-Chairman proposed to simplify the text by adding "to do work on account of the ship in accordance with national law or regulation or collective agreement" after "required". This would also take into account the fact that work might consist of quite different activities depending on national practice. Since it

would be difficult, or even undesirable, to obtain a precise definition, it should remain flexible and be determined at the national level.

37. The Seafarer Vice-Chairman was concerned about the lack of a definition of "hours of work". He agreed with the idea of the Government member of Mexico, provided work was not restricted to activities on board ship. He submitted an amendment that took this into account and was also similar to the first part of that put forward by the Shipowners. The second sentence took into account situations when seafarers might be on call. He cited the example of engineer officers on night call who would most likely be in a state of heightened alertness. Referring to the Shipowners' proposal for greater flexibility, he pointed out that regulatory mechanisms defining work did not exist everywhere. The high degree of flexibility sought could give rise to continued exploitation. Fatigue and stress among seafarers were critical areas of concern. The period during which a seafarer was on call could not be considered as free time or a rest period.

38. The Shipowner Vice-Chairman contended that it would be difficult to agree on what constituted hours of work in different national contexts. Such attempts were likely to make the proposed Convention too rigid and hinder its ratification.

39. The Government member of Australia noted that the degree of stress and fatigue for seafarers on call was not the same as when physical activity was being undertaken. It was difficult, therefore, to accept that time on stand-by should be considered as work time. He supported the proposal advanced by the Shipowners, noting that in Australia those questions were covered by collective agreements.

40. The Government member of the United Kingdom shared the opinion of the previous speaker and said that regulations concerning that question were soon to come into force there. Rather than attempting to define periods of work the new regulations focused on rest periods. He also supported the Shipowners' proposal, as did the Government members of Argentina, Canada, India, Philippines and the Russian Federation.

41. The Government member of Canada added that he also found the draft Office text acceptable and considered the Seafarers' point concerning hours of duty a valuable concept but, like the Australian Government member, did not consider that time on stand-by should necessarily be duty time.

42. The representative of the European Commission informed the Committee that the matter had already been discussed in the Commission. The text of article 2(1) of a Directive adopted by the Council of the European Union in November 1993 defined working time as "... any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice;". [1]

43. In the opinion of the Government member of the Netherlands, it was only possible to support the draft Office text or the amendment of the Government member of Mexico, with a subamendment deleting the words "on board ship".

44. The Seafarer Vice-Chairman disagreed strongly with the view that the question of periods of responsibility was not significant as far as fatigue was concerned. Since there were many countries where there were no collective agreements, laws or regulations concerning hours of work, his group could not accept that part of the Shipowners' text. In the light of Government members' comments, he agreed to support the amendment of the Government member of Mexico, as subamended by the Government member of the Netherlands.

45. The Shipowner Vice-Chairman considered that to be an acceptable alternative.

[1] "Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time", in *Official Journal of the European Communities*, L 307, Vol. 36, 13 Dec. 1993, p. L 307/19.

46. A subamendment proposed by the Government member of Mexico to replace the words "on board ship" by "on account of the ship" received general support and the amendment as subamended was adopted.

47. Point 6(b), as amended, was adopted.

48. An amendment to point 6(c) introduced by the Shipowner Vice-Chairman which read, "the terms 'hours of rest' should mean time which is not hours of work", was intended to make the text of the original draft paragraph more concise. The Government member of Mexico supported this proposal.

49. The Seafarer Vice-Chairman pointed out that work practices had changed and that hours of work and rest were generally spread out over a 24-hour period rather than being in acceptable periods. The need for rest should be recognized. His group's amendment was similar to that of the Shipowners but it included breaks of less than one hour in hours of work. The second sentence sought to respond to situations where levels of activity were so intense that short, intermittent rest periods might not suffice.

50. The Shipowner Vice-Chairman believed that the proposed text would introduce the notion that working time could not be spread out over the day. The definition of rest periods varied from country to country and some short breaks were often counted as working time. They did not need defining. This proposal would be dealt with later in the text.

51. The Government member of Australia suggested the use of the term "short breaks". This proposal was supported by the Government member of Canada, who had reservations about having a text that was too specific.

52. The Government member of the Netherlands agreed with the Seafarers that short breaks should be included in hours of work.

53. The Seafarer Vice-Chairman felt it important that short breaks be mentioned as it clarified the definition. He agreed to this terminology as did the Shipowner Vice-Chairman and several Government members.

54. Point 6(c), as amended, was adopted.

55. Point 6(d) was adopted unchanged.

56. The Seafarer Vice-Chairman introduced an amendment to add a new subpoint to point 6 that would take account of the major changes that had taken place in the industry. The term "shipowner" was no longer appropriate, since seafarers might be hired by owners, charterers, or manning agencies; it should be replaced throughout the text by "company" as defined in the amendment.

57. The Shipowner Vice-Chairman said it was important to mention the employer in this definition and proposed its insertion. He also proposed that the second half of the text concerning the responsibilities of the company be deleted.

58. While the Seafarer Vice-Chairman accepted the suggestion to insert "employer" he strongly opposed the deletion of the rest of the text. It was important to be precise when it came to the question of responsibility which was addressed in that latter part of the text and which had been taken from the International Safety Management Code.

59. A representative of the Secretary-General cited the relevant provision of IMO Assembly resolution A 741(18), which was identical to the text of the Seafarers' amendment but concluded with the words "imposed by the Code".

60. The Shipowner Vice-Chairman recalled that the Committee was dealing with labour issues and if there were to be any reference to responsibilities, "employer" would have to be included. Because this was a labour instrument he questioned the need for the second part of the text. If it were retained it should refer to the day-to-day operation of the ship.

61. The Seafarer Vice-Chairman accepted the inclusion of "employer". The second part of the text should be kept since a Convention must identify the parties it obligated. The IMO Code dealt with the same issue and safety was the critical factor. He asked the Shipowners to withdraw their proposal to insert "day-to-day".

62. The Government member of Australia suggested that "ship operator" be used instead of "company" since it would cover the role of a management company. Instead of using "day-to-day operation", the "operation of the ship for the purposes of the Convention" could be used.

63. The Government member of the Netherlands opposed the amendment which he considered unnecessary. Neither "company" nor "ship operator" was mentioned in the Office text. The addressees of the Convention are member States.

64. While the Government member of India was in favour of adding "employer", he saw no need for including "day-to-day" and also recommended deleting the last part of the text.

65. The Shipowner Vice-Chairman wished to retain "shipowner". Taking into account the comments made by previous speakers, he proposed: "The term 'shipowner' includes the ship operator or the employer or any other person or organization such as the manager or bareboat charterer, who has assumed the responsibility for the operation of the ship for the purposes of this Convention."

66. The Government member of Australia supported this proposal, while the Government members of the Netherlands and Sweden asked for the opinion of the Legal Adviser on the necessity for this amendment.

67. The Legal Adviser informed the Committee that a definition of shipowners would not be essential for the purposes of fulfilling the objectives of the Convention. There was no such definition in other ILO maritime Conventions, which imposed obligations on member States and their competent authorities, not on shipowners. It was up to the State to take the necessary legal steps to ensure seafarers covered by the Convention were adequately protected in accordance with its provisions, irrespective of their employers or the contractual arrangements under which they were employed. The same was true of the conclusions proposed on wages which in their present formulation did not include any specific obligation on shipowners. In the circumstances the addition of a definition would only have an impact on the meaning of "shipowners' organizations" as referred to in various places in the Convention, for the purpose of consulting them.

68. The Shipowner Vice-Chairman saw no need to have the definition for the purpose of consulting the most representative groups.

69. The Seafarer Vice-Chairman noted that, under the proposed Convention, shipowners had no responsibility; this rested entirely with governments. A definition would assist governments in identifying those persons or organizations expected to comply with the provisions of the instrument. He proposed a subamendment which was generally supported, to include a reference to compliance with the provisions of the Convention.

70. The proposed new subpoint 6(e), as amended, was adopted.

Point 7

71. Six amendments were submitted on this point.

72. The Seafarer Vice-Chairman introduced an amendment to delete the point on the grounds that it was open-ended and much of its contents constituted work rather than rest. He provided several examples among the activities listed, such as customs and health formalities and frequently held drills, to demonstrate they were not rest. The Office text also provided the master with excessive scope to exclude from consideration certain tasks that were safety-related. The reference to distress situations was also too broad. He also had reservations about leaving it to governments to decide, "after consultation" with the social partners, whether the activities mentioned were to be considered work or rest, particularly when the degree of involvement of the social partners in consultation processes varied widely between countries. He recalled that in the definition of work proposed by the Seafarers, consideration was given to periods of responsibility and that governments had considered periods on call as periods of rest. If the Office text were retained, it should take account of periods of responsibility.

73. The Shipowner Vice-Chairman introduced his group's amendment which changed the order of the points to reflect their degree of importance, and added a new subpoint (e) concerning extra time required for the normal relieving of watches, the text of which was taken from Article 19(f) of Convention No. 109 (1958). Furthermore, a ship was a special place and it must be clear that everyone should be available in an emergency and that these activities should not be mixed with normal hours of work or hours of rest, hence the changes to the chapeau.

74. The Seafarer Vice-Chairman considered that the principles in the Office text had been radically altered by the opening sentence of the Shipowners' amendment. Moreover, the final subpoint referring to relieving of watches clearly concerned work.

75. The Government member of the Netherlands preferred the Office text, which could be amended slightly. That view was supported by the Government members of Germany, India, Islamic Republic of Iran, Liberia and Norway.

76. Depending on the outcome of the consideration of subsequent amendments the Shipowner Vice-Chairman was prepared to withdraw his group's amendment.

77. The amendments of the Government members of Germany and the Netherlands to substitute "fire-fighting" for "fire" in point 7(a) and to delete point 7(b) were adopted. Their amendment to add "in cases of emergency" in point 7(c) was subamended by the Seafarers to read "... when the ship is in danger ...".

78. An amendment submitted by the Government member of Greece referring to pollution was withdrawn.

79. The Government members of Australia, Egypt, Liberia, the Netherlands, Norway and the United Kingdom opposed the Seafarers' suggestion that if point 7 were retained the words "after consultation" in the opening sentence should be replaced by "together with". Such a change would have serious implications for the laws of a number of countries and would imply that shipowners and seafarers had a direct role in the legislative process.

80. The proposal of the Government member of Liberia to use "with respect to" in line 2 of the opening paragraph, was adopted.

81. In view of the consensus to retain point 7, the Seafarer Vice-Chairman agreed to accept the above-mentioned amendments to the Office text.

82. The Shipowners withdrew their amendment in favour of the subamended Office text.

83. The Seafarer Vice-Chairman proposed to subamend the Office text by including periods of responsibility in its scope in a new subpoint.

84. Following the preparation of a consolidated draft of point 7 by the Office, the Seafarers' group and the Government members of Australia, the Islamic Republic of Iran and the United Kingdom accepted it. The Shipowner Vice-Chairman had misgivings about the final subpoint.

85. The Government member of Germany said the new subpoint was out of place since point 7 should be limited to emergency situations. That view was shared by the Government members of Canada, Denmark, Japan, the Netherlands, Norway and the Russian Federation.

86. The Government member of Australia pointed out that the subpoints did not all deal with emergency situations. One solution would be to separate (d) from the other three.

87. The Seafarer Vice-Chairman recalled he had tried to establish that periods of responsibility were not rest. It was difficult to define what periods of responsibility were and the issue should be addressed since it was relevant to the operation of modern fleets. If there were a list of issues that could be discussed in consultation, the competent authority could decide what they were. He was prepared to separate the issue as suggested by the Government member of Australia.

88. The Government member of Panama asked for clarification as regards the implications of subpoint (d) for the captain's responsibilities. The Government member of Mexico felt that the text was logical in the light of the rise in unmanned engine rooms.

89. The Government members of Denmark and the Netherlands called for the final subpoint to be deleted on the respective grounds that it was a matter for collective agreements or because the master was responsible 24 hours a day.

90. The Government members of Canada and Spain said the matter could be dealt with elsewhere in the text.

91. The Seafarer Vice-Chairman stressed that duty periods of responsibility had already been explained. If they were not work they could not be dealt with in collective agreements. The Seafarers' reasons for the text were on safety not industrial grounds. Also, it should not be relocated.

92. The Committee agreed to leave the text of subpoint (d) in square brackets for consideration at a second discussion.

93. Point 7, as amended, was adopted.

Point 8

94. Five amendments were submitted concerning this point. An amendment to delete the point was submitted by the Government member of Mexico and seconded by the Government member of Panama. An identical amendment was submitted by the Seafarers' group. Both were motivated by the desire that the proposed Convention not include a provision that excluded certain categories of employees from its coverage.

95. The Seafarer Vice-Chairman drew attention to the multi-cultural composition of those recruited to work on board ships, their different levels of competence — acquired through training in different countries, and the evidence that human error was a major factor in accidents at sea. The heterogeneity of the crew, the use of sophisticated technologies on board, the declining need for senior crew members to stand watch and the importance of maintaining safety, placed considerable responsibilities on a ship's management. Senior staff should not be excluded from the scope of the Convention.

96. A Seafarer member of Germany underscored the importance of having the Convention apply to all crew members, including masters, particularly since in certain countries, they might not be covered by the national labour legislation.

97. The Shipowner Vice-Chairman was in favour of retaining the point, arguing that senior staff generally did not fall within the framework of standard conditions for working time and rest and did not share the same privileges and duties as workers.

98. The Government members of France, Japan, Panama and Spain supported the amendment. Opposition to the deletion of point 8 was expressed by the Government members of Canada, the Netherlands, Norway and the Russian Federation.

99. The amendments to delete point 8 were rejected by 10,569 votes in favour, 14,535 against, with 1,292 abstentions.

100. Discussion on point 8 focused on which among "masters", "chief engineers" or "chief officers" should be deleted, as was proposed by the Government members of Canada, Denmark, Germany, Japan, the Netherlands and Sweden and the Shipowners' group.

101. It was decided in the light of the working group's discussion on point 6 and the Committee's decision to adopt point 6(a) as amended that point 8 was no longer necessary.

102. Referring to the Spanish text, the Government member of Mexico noted that only the term "gente de mar" had been used in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978. Consequently, he objected to the use of the additional term "o marinos".

103. Point 8 was deleted.

Proposed new point 9

104. In introducing the amendment to add a new point at the end of the section on scope and definitions, the Seafarer Vice-Chairman stressed the importance of stating clearly that it was

the responsibility of the competent authority and shipowners to ensure that ships' masters had adequate resources to operate the ship, to give seafarers the necessary protection and ensure safety.

105. The Shipowner Vice-Chairman said that while his group agreed with the considerations underlying the proposed text, they proposed a subamendment to remove the reference to the competent authority and called on shipowners to take all reasonable steps to ensure that the ship be operated in compliance with the Convention.

106. The Government members of Australia, Denmark, the Islamic Republic of Iran, the Netherlands, Norway and the United Kingdom expressed a preference for the Shipowners' proposal on the basis that it was difficult for the competent authority to be involved in the operation of a ship and, according to the Government member of the Netherlands, the competent authority's responsibilities were set out in Safety of Life at Sea (SOLAS) Chapter V and the ISM Code.

107. The Government member of Germany did not oppose the basic principle of the amendment but felt there could be problems regarding ratification with the current wording. She requested the Office to examine how the text could be unified.

108. The Government member of Mexico noted that there were already provisions in the International Convention for the Safety of Life at Sea (SOLAS) and IMO Assembly resolution A.481 (XII), which dealt with the obligations of governments for ensuring safety at sea. The responsibility of the competent authority in that sphere was also covered in point 17(1) of the Office text.

109. The Seafarer Vice-Chairman reiterated the responsibility of governments, emphasizing that a master could not be held accountable for failing to apply a system that ensured proper work and rest periods and therefore safety, if he were not given the means to do so. A text that made no mention of the responsibility of the competent authority would not respond to the Seafarers' concerns. Manning was part of the question and the Seafarers were trying to establish governments' responsibilities for manning in this part of the text. The reference to "reasonable steps" in the subamendment would also give rise to disagreement.

110. The Shipowner Vice-Chairman proposed the reinsertion of a reference to the competent authority.

111. That subamendment was not acceptable to the Government member of the Netherlands who said it was against the ISM Code.

112. The Government member of Australia accepted the Seafarers' argument about putting some responsibility on the shipowner since the competent authority would not normally be able to cover every aspect of a ship's operation. He noted that the responsibility of governments regarding the safe manning of ships was to be found in point 17(2). This view was shared by the Government member of Denmark.

113. Following an informal tripartite discussion the new provisions were adopted (as point 14).

II. Seafarers' hours of work and manning of ships

114. The Seafarers' group submitted an amendment to delete "... and manning of ships" from this heading, and to use the "manning of ships" as the title for a new subheading to be inserted after paragraph 16 of the Office text. The amendment was adopted.

Points 9 and 10.

115. The Committee decided to treat points 9 and 10, which between them had received 16 amendments, including some to delete one or the other of them, together. An amendment to delete point 9 and one to amend point 10(1)(b)(i), submitted by the Government members of the Netherlands and Mexico respectively, were not seconded. Prior to referring these two points

to the working group, the Chairman invited members to express their views in order to guide the working group in its work.

116. The Shipowner Vice-Chairman said that since point 9 was linked to the question of wages it would be better in the Recommendation. The Seafarers' insistence on one day's rest per week could be an obstacle to ratification.

117. The Seafarer Vice-Chairman recalled that an eight-hour working day was a widely accepted standard. The Convention needed to set a benchmark for seafarers' hours of work which included at least 24 hours of uninterrupted rest per week. The Seafarers could accept a six-day work week as a basic reference point, but there could be no vagueness when it came to hours of rest. A standard was necessary in order to be able to determine maximum and minimum limits, and exceptions to these, as set out in the text would operate by virtue of their flexibility. Establishing standards with respect to working time did not mean that seafarers would refuse to work overtime or to work a seven-day week if required. While governments had the main responsibility, they needed to draw on the competence and experience of shipowners and seafarers, to ensure that the standards were being respected. Many now saw collective agreements as a means to avoid having obligations under Conventions.

118. The Government member of the Netherlands said that the making of a distinction between normal and maximum hours of work only made sense for the purpose of calculating overtime pay and thus should be covered in the Recommendation.

119. The Government member of Denmark, in relation to two amendments submitted jointly with the Government member of Norway, said that since the regulation of working time varied between countries it would be hard to find common ground. A flexible, practical system was required that would give the social partners a framework in which to bargain. In some circumstances it could be left up to the masters and seafarers to find a settlement in respect of the minimum rest period. There was need to ensure that seafarers got sufficient rest.

120. The Government member of the United States proposed that "24 hours rather than a day" should be the reference point when determining maximum hours of work, which he felt should be 15, and 36 in a 72-hour period.

121. The Government member of the Russian Federation wanted a full consideration of the definition of working time for seafarers and it should be related to the provisions concerning wages in the Recommendation. She said that the proposed amendment covered only practical matters relating to seafarers' wages and therefore it could be renamed "Recommendation on Wages".

122. Noting that there were not many countries which had specific rules for total working hours, the Government member of Japan stated that normal working hours, excluding work after regular hours, should be defined, and workers should be compensated by additional payments for work after regular hours.

123. The Government member of Denmark believed that the hours mentioned in the amendment from the Government member of the United States would be detrimental to the two-watch system. Furthermore, the proposal did not ensure a maximum of 14 hours of work per day, which the Government member of Denmark supported. The amendments from the Government member of the Russian Federation should be discussed within the framework of the Recommendation dealing with wages. She added that the duration of rest periods should be determined in collective agreements.

124. The Shipowner Vice-Chairman stated that to specify minimum hours of rest and maximum hours of work would protect seafarers from fatigue. The working day was traditionally agreed by the social partners. As regards determining rest periods, there was need for flexibility to take into account the two-watch system. If this were jeopardized it would affect ratification.

125. The Seafarer Vice-Chairman underlined the importance of establishing clear limits and guidelines as regards hours of work and rest if the question of fatigue were to be addressed

adequately in the Convention. He argued that the Shipowners' amendments would provide exceedingly long hours of work for seafarers and to support his argument, he cited calculations based on them. He appealed to governments to assume their responsibility on the question of setting minimum standards in that regard.

126. The Shipowner Vice-Chairman said that no international instrument in force had provisions on hours of work. The hours proposed in his group's amendment were an attempt to provide realistic limits. The text was similar to that adopted by the IMO Committee on Standards of Training and Watchkeeping for inclusions in the proposed revision of the IMO's International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, except that the IMO draft text contained no figures on hours of work. The Shipowners' proposal did contain figures, taking into account the preference of some governments for referring to hours of work and that of others, for referring to hours of rest.

127. The Chairman introduced a text recommended by the working group which replaced points 9 and 10 of the Office text. Certain subpoints were in square brackets because there was no consensus. Further national consultations prior to the Maritime Conference would be needed.

128. The Committee agreed that the following observations should be borne in mind during the deliberations of the forthcoming Maritime Conference. First, the "week" to which reference is made when dealing with maximum working time consists of six days. Second, there was no agreement with respect to exceptions from the provisions concerning maximum working time and minimum rest time in the case of a ship entering or leaving port, which was of particular importance with regard to the provisions concerning a minimum continuous period of rest of six hours. While the Shipowners' group was in favour of such an exception, the Seafarers' group was not. This matter should be taken up at the Maritime Conference.

129. Two minor subamendments from the Government members of Australia and Germany were adopted.

130. Points 9 and 10, as amended, were adopted.

Point 11

131. Two amendments were submitted. An amendment by the Government member of Mexico was not seconded and was not discussed.

132. An amendment introduced by the Seafarer Vice-Chairman sought to make the provisions of this paragraph more specific as far as minimum ages for employment and night work on a ship were concerned. He noted that if adopted, it would be necessary to revise the Minimum Age (Sea) (Revised) Convention, 1936 (No. 58), which, in Article 2, prescribed 15 years as the minimum age for working on vessels.

133. The Shipowner Vice-Chairman said that his group accepted the age limits of 16 years for employment on ships and 18 years for night work, although in the light of the ILO Protection of Young Seafarers Recommendation, 1976 (No. 153), he wondered whether this point needed to be so specific. Moreover, exceptions would be required for young cadets who might need to engage in night work as part of their training.

134. This view was shared by the Government member of Denmark who cited Article 4(2)(b) of Recommendation No. 153 in support of the need to make exceptions in order not to hinder the training of young seafarers.

135. The Committee agreed to add the text of the relevant provision of Recommendation No. 153 to the amendment and referred the point to the working group, which submitted a revised text for consideration.

136. In response to questions concerning the hours which were to be considered as "night", the Committee decided that the revised text posed no problem and that the focus should be on dealing with exceptions to the rule regarding night work for young seafarers undergoing training. A subamendment by the Government member of Egypt to increase to 11 hours the hours considered as night was not adopted.

137. The Government member of France wondered whether the exemption would be contrary to the regulations governing night work for young persons working on ships or whether it would apply only to trainees. On being advised that it would only apply in the latter case, he recommended that the text be amended to convey that idea more clearly. He also proposed that "person" in the first paragraph be replaced with "seafarer".

138. A subamendment to add "between the ages of 16 and 18" after "seafarers" was put forward by the Shipowner Vice-Chairman.

139. Both subamendments were adopted.

140. Noting that night work might on some occasions be necessary for certain persons under 18 years of age performing duties on passenger ships in areas other than those related to navigation or the engine room, the Government member of Greece proposed that the relevant part of the first paragraph be revised to take this into account. The subamendment was not adopted.

141. Point 11, as amended, was adopted.

Point 12

142. Three amendments were submitted.

143. The Seafarer Vice-Chairman said that the intention of his group's amendment was to strengthen the Office text by deleting "duty" and focusing the text on the safe operation of the ship since the focus was not on the master's duties but rather on the right to call on crew members to work in times of emergency. He stressed that the duties of masters as far as the efficient operation of ships were concerned should not be linked to their unquestionable right to take certain courses of action in times of emergency. If there were agreement on that point, he said, then the wording of the text could be left to the drafting committee.

144. The Shipowner Vice-Chairman stated that the amendment was too restrictive and that his group preferred the Office text.

145. The Government member of Greece, seconded by the Government member of Liberia, submitted an amendment to include the prevention of pollution in the scope of the point. The proposal arose from concern for the protection of the marine environment.

146. The Seafarer Vice-Chairman and several Government members (Australia, Canada, Netherlands, United Kingdom, United States) considered it inappropriate to add such a provision to this point.

147. The Shipowner Vice-Chairman and the Government members of Liberia and the Russian Federation were in favour of the amendment if an appropriate place elsewhere in the text could be found for it.

148. The Shipowner Vice-Chairman suggested that the text could be reworded to ensure that it applied during an emergency. The Government members of Denmark and the Philippines supported this suggestion.

149. The Government member of Australia drew attention to the fact that "cargo" was mentioned in point 7 but not in point 12. There was no need to mention pollution anywhere since action to prevent pollution would be covered under the concept of emergency situations.

150. The Committee agreed to a text based on the Seafarers' amendment and that the drafting committee should try to find an appropriate wording and placement of the text concerning the fighting of pollution.

151. Point 12, as amended, was adopted.

Point 13

152. Two amendments to delete this paragraph were submitted by the Government members of Mexico and Germany. The Government member of Germany said it was not clear to whom the paragraph was addressed. Moreover, hours of rest were already covered in points 9 and 10 and the situation concerning the master in the Convention was still to be settled.

153. In response to a question, a representative of the Office (Mr. Wagner) said that the aim had been to introduce some balance in the text, by addressing this provision to the seafarers. It had been inspired by similar provisions in the national legislation of certain countries.

154. The Shipowner Vice-Chairman agreed with the rationale for having that provision and opposed the amendment.

155. The Seafarer Vice-Chairman supported the amendment as did several Government members.

156. Point 13 was deleted.

Point 14

157. Of the four amendments submitted, that from the Shipowners' group was designed to introduce flexibility with respect to the ways in which records were maintained.

158. The Seafarer Vice-Chairman stressed that in a Convention dealing with manning and hours of work there should be no flexibility in record keeping. He submitted three amendments, subsequently withdrawing one of them. His group emphasized the importance of keeping a daily record of hours of work and rest and providing seafarers with copies of their personal time sheets. As far as the inspection of records was concerned, the provision should specify the time for which records should be kept, the way in which they should be handled thereafter and the need to keep the competent authority informed about the situation in the shipping industry. He also noted the importance of having copies of records in the event of the need to investigate and settle complaints as regards hours of work and rest.

159. The Government member of the Russian Federation supported the first of the Seafarers' amendments, which was in line with his country's practice of keeping daily records.

160. The Government members of the Netherlands and France supported the second of the Seafarers' amendments to the effect that seafarers should receive copies of the personal time sheets.

161. The Government member of Australia considered the Seafarers' proposals on record keeping to be too prescriptive. Records should be collected at appropriate intervals to ensure that accuracy was maintained and seafarers should receive a copy of them. He pointed out that the inspection of records could be delegated to an appropriate body since, according to point 15, the responsibility of the competent authority was to ensure that inspections took place, not necessarily to carry them out.

162. The Shipowner Vice-Chairman pointed out that his group did not question the need to keep records, nor was it opposed to the inspection of records by the competent authority. Such inspection activities need to be harmonized, however, in order to prevent the duplication of inspections by competing national bodies.

163. The Government members of Denmark and the Netherlands supported the Shipowners' amendment since it was less detailed than the Office text, provided seafarers received a copy of their own records.

164. As regards records of hours of work and rest, several Government members expressed reservations about having a large volume of documentation forwarded to the competent national authority and preferred them to be examined during inspections.

165. The Seafarer Vice-Chairman reminded the Committee that in withdrawing an earlier amendment to delete paragraph 7, the Seafarers had shown support for the Office text. He noted with regret the difficulty in reaching agreement on the critical questions of keeping adequate records of seafarers' hours of work and rest, which were vital to the question of safety at sea. He wondered why the Shipowners had "on board ship" in their amendment. The use of the terms "regularly" and "for a reasonable period" was not acceptable. He opposed the Shipowners' amendment.

166. The working group reviewed point 14 and the amendments, and proposed a revised text to the Committee.

167. Point 14, as amended, was adopted.

Point 15

168. Point 15 and the two amendments to it were referred to the working group which submitted a revised text to the Committee, which adopted it.

169. Point 15, as amended, was adopted.

Point 16

170. Two amendments were considered: one from the Shipowners' group and the other from the Government member of the Netherlands seconded by the Government member of the United Kingdom.

171. The Government member of Denmark mentioned the importance of making reference to the new instrument on labour inspection that was also under consideration at this Meeting and expressed the hope that the matter would be taken up in the working group.

172. The Shipowner Vice-Chairman said the Office text was too open-ended. Changes in manning were not the only solution to the problem raised in this paragraph.

173. The Government member of the Netherlands said that the thinking underlying his proposal was the same. The Government member of Denmark shared the view.

174. The Seafarer Vice-Chairman opposed the amendments. The Shipowners' proposal allowed for too much flexibility. The issue of manning was fundamental to the discussions about the responsibility of masters and the importance of providing them with resources (i.e. manning) which would permit them to fulfil the requirements concerning hours of work and rest.

175. The Government member of Australia said the point dictated how the competent authority should carry out its functions; it also duplicated the provisions of point 20. He proposed it be deleted.

176. The Shipowner Vice-Chairman withdrew his group's amendment with the proviso that the thrust of the proposal of the Government member of the Netherlands would be followed.

177. The Seafarer Vice-Chairman proposed a subamendment to reflect his group's concerns about manning.

178. The Government member of the Netherlands opposed the subamendment and, together with a similar position taken by the Government members of Canada, Germany and Norway, supported the deletion of the point.

179. The Seafarer Vice-Chairman strongly opposed a deletion. The point, which set out what the competent authority should do where there were infringements of the provisions governing hours of work and rest, would be of great value.

180. Following the support of several Government members for retaining the point, either as amended or including a reference to manning, a subamended text which included manning and replaced "ensure" with "require" was adopted.

181. Point 16, as amended, was adopted.

Point 17

182. Four amendments were submitted, including one from the Government member of Mexico, seconded by the Government member of Panama, which referred only to the Spanish text and was referred to the drafting committee.

183. The Seafarer Vice-Chairman introduced an amendment to replace the Office text with one that was based on provisions contained in several international instruments including those of the IMO, all of which had been widely adopted. The purpose of the amendment was to address the relationship between manning and fatigue, stress, work and rest.

184. The Government member of Denmark pointed out that resolutions were not binding and, moreover, she could not support proposals that affected maintaining the two-watch system.

185. The Government member of Mexico drew the attention of the Committee to Rule 13 of the International Convention for the Safety of Life at Sea which spelled out the responsibility of governments to ensure safety at sea.

186. The texts were referred to the working group, which proposed a text.

187. A subamendment by the Government member of Liberia to replace "limit fatigue" by "avoid fatigue" was not supported.

188. The Seafarer Vice-Chairman requested the Office to undertake research and studies on the links between work and fatigue and make the results available for the discussion at the forthcoming Maritime Conference. That request received the general support of the Committee.

189. Point 17, as amended, was adopted.

Point 18

190. Of the four amendments submitted, two (from the Government members of Greece and Mexico) were not seconded.

191. The Shipowner Vice-Chairman introduced an amendment to delete the point by stating that since safe manning levels were determined by the competent authority, employers should not have to deal with complaints.

192. The Seafarer Vice-Chairman strongly opposed the deletion. If there were no procedures for lodging complaints it would call into question the significance of recording hours of work and rest, and providing for inspection. The Seafarers' amendments sought to replace "machinery" with "procedure" in 18(1), and including in 18(2) provision for a tripartite arbitration body to examine complaints.

193. The Government member of Australia drew attention to the possibility of conflicts of interest in a situation where representatives of shipowners participated in such tripartite arrangements. He proposed a subamendment to the effect that a Member should have procedures to investigate a complaint by a seafarer, or an organization representing seafarers, relating to any matter contained in the Convention.

194. The Shipowner Vice-Chairman supported this proposal.

195. The Seafarer Vice-Chairman did not dispute the responsibility of the competent authority to investigate complaints, but seafarers were sometimes reluctant to lodge complaints, fearing adverse consequences. His group's proposal was intended to promote transparency and tripartite cooperation.

196. The Government member of the Netherlands, seconded by the Government member of Denmark, proposed the deletion of the second paragraph since there was no need to prescribe how governments should set up dispute settlement mechanisms. This proposal was supported by a number of Government members and subpoint 2 was deleted.

197. A subamendment to 18(1) by the Seafarer Vice-Chairman that a Member should, in consultation with representative organizations of shipowners and seafarers, undertake to maintain efficient procedures for the investigation and settlement of any complaint or dispute concerning the manning of a ship or to satisfy itself that such procedures exist was opposed by the Shipowners' group and the Government members of the Netherlands and the United Kingdom.

198. The Seafarer Vice-Chairman underscored the importance of having a complaints procedure in which the social partners were involved. He did not question the responsibility of governments; the aim of the subamendment was to have a system that would be perceived by the Shipowners and Seafarers as being fair to all parties.

199. The Government member of the Netherlands could accept the inclusion of a provision for consultation and suggested that the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) be included in point 3. That was accepted by the

Seafarer Vice-Chairman, who asked that the question of Convention No. 144 be dealt with by the drafting committee.

200. The Seafarer Vice-Chairman opposed this reference, the treatment of which was referred to the drafting committee.

201. A subamendment by the Government member of Denmark to enable any party to complain was supported.

202. Point 18, as amended, was adopted.

III. Application

Point 19

203. Three amendments to point 19 concerned the same question as in point 4 relating to the place of registration. The matter was dealt with by the working group in the same manner as in point 4.

204. Point 19, as amended, was adopted.

Point 20

205. Point 20 was adopted.

206. An amendment by the Shipowners' group to insert a new point 20 bis concerning the entry into force of the Convention was referred to the working group, which amended it after reviewing the conditions for other ILO instruments.

207. New point 20 bis, as amended, was adopted.

IV. Final provisions

Point 21

208. Two amendments were referred to the working group which recommended that the proposed reference to the Minimum Age (Sea) Convention, 1920 (No. 7) and the Minimum Age (Sea) Convention (Revised), 1936 (No. 58) be referred to the Legal Adviser and the drafting committee.

209. Point 21 was adopted.

Conclusions proposed with a view to a Recommendation concerning seafarers' wages and hours of work and the manning of ships

210. The Committee referred points 22 to 38 directly to the second working group for consideration, resolution and submission to the drafting committee.

211. The Government member of Denmark who chaired this working group identified those amendments that had been retained, subamended, withdrawn or rejected. She referred in particular to several points which were important in arriving at the final texts which the working group had agreed. Point 33(a), which dealt with the principle of non-discrimination, was of major importance to the Seafarers, who wanted a provision that guaranteed equal pay for work of equal value, regardless of the seafarer's place of residence. Consequently, the Seafarers' group tabled an amendment to have "residence" included among the factors which ought not to be a basis for discrimination. However, most members of the working group favoured a more global text, along the lines of those contained in other ILO instruments (i.e. the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)). Another critical issue that arose concerned administrative or legal procedures for the examination and settlement of disputes involving seafarers who had been paid wages below the statutory minimum. The Seafarers' group insisted that seafarers should have access to a judicial procedure at no cost to the seafarer. Their proposal in that regard (point 35) was carefully examined. While the working group supported the idea of there being inexpensive arrangements for handling complaints, most Government members objected to having member States bear the costs of such arrangements.

She recommended that the Committee agree to the amended points submitted by the working group being sent to the drafting committee.

212. The Committee approved the action recommended by the working group and the amendments submitted in respect of points 22 to 38 were accepted, rejected, withdrawn or subamended accordingly.

213. The drafting committee examined the draft text of the Proposed Conclusions and recommended minor changes in wording which are reflected in the Proposed Conclusions contained in this report.

214. The Government member of the drafting committee drew the Committee's attention to several of the issues that had been referred to it and the outcome of the discussions thereon. The drafting committee had examined, under point 12, whether a reference to pollution could be included there or elsewhere in the draft Conclusions. The drafting committee recognized the importance of this question but was unable to find a suitable place for its inclusion in the text. Secondly, he pointed out that paragraph 18 of the draft Conclusions had been placed in square brackets following the information from the Legal Adviser that, since the question of coming into force of Conventions was being dealt with in a wider context within the ILO, the issue should be raised at the forthcoming Maritime Conference. Thirdly, the legal Adviser had pointed out that as the Conventions mentioned in point 21 (No. 7 and No. 28) were not being revised, they should not be referred to.

215. The Government member of Denmark who, as Chairperson of the second Working Party, also participated in the drafting committee, informed the Committee about certain aspects of the discussion on the draft Conclusions concerning a proposed Recommendation. She pointed out that the paragraphs in square brackets had not been resolved in the Working Party. She suggested that paragraph 31(2)(b) should also be in square brackets to ensure it was reopened at the Maritime Conference. She noted that "recommended by the Governing Body, by" in the first sentence of paragraph 33 of the draft conclusions should be replaced by "recommended to the Governing Body by".

General matters

216. At the second sitting of the Committee, the Seafarer member of Spain complained about the lack of adequate interpretation services which was making it virtually impossible for members of his group, as well as others, to participate meaningfully in group meetings. He urged that the Office take the necessary steps to ensure interpretation, at least in the three official languages of the meeting. Moreover, the limited time for submitting amendments and the lack of staff to assist in their translation precluded their proper consideration, particularly in meetings in which there was no interpretation.

217. The Chairman took note of the complaint and said that the Office would do all it could to maximize the availability of interpreters, having regard to the budget for the Meeting.

218. Since the procedure adopted in dealing with the draft Recommendation did not allow for a full discussion by the Committee, that could be reflected in this report. The Committee requested that more time be provided in the Maritime Conference for the discussion on the Recommendation.

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Adoption of the report

220. At its ninth sitting on 8 December 1994, the Committee unanimously adopted the present report on its proceedings, together with the appendix, for submission to the plenary of the Meeting.

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Proposed Conclusions concerning the revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109) and Recommendation, 1958 (No. 109) submitted by the Committee

Proposed Conclusions with a view to a Convention

1. A new international instrument concerning seafarers' hours of work and the manning of ships should be adopted.

2. The instrument should take the form of a Convention.

3. The Preamble should refer to the following Conventions and Recommendations of the International Labour Organization: the Wages, Hours of Work and Manning (Sea) Convention (Revised) and Recommendation, 1958 (No. 109) and the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). The Preamble should also refer to the following instruments of the International Maritime Organization to the extent that they are relevant for the purposes of this Convention: International Convention for the Safety of Life at Sea, 1974, as amended, International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, Assembly resolution A481(XII)(1981) on Principles of Safe Manning, Assembly resolution A741(18)(1993), the International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code) and Assembly resolution A772(18)(1993) on Fatigue Factors in Manning and Safety.

I. Scope and definitions

4. (1) The proposed Convention should apply to every seagoing ship, whether publicly or privately owned, which [is registered in the territory] of any Member for which the Convention is in force and is ordinarily engaged in commercial maritime operations.

(2) To the extent it deems practicable, after consultation with the representative organizations of fishing vessel owners and fishermen, the competent authority should apply the provisions of the Convention to commercial maritime fishing.

(3) In the event of doubt, as to whether or not any ships are to be regarded as engaged in commercial maritime operations or commercial maritime fishing for the purpose of the Convention, the question should be determined by the competent authority after consultation with the organizations of shipowners, seafarers and fishermen concerned.

(4) The Convention should not apply to wooden vessels of traditional build such as dhows and junks.

5. For the purposes of the Convention:

(a) the term "seafarer" should mean any person defined as such by national laws or regulations or collective agreements who is employed or engaged in any capacity on board a seagoing ship to which the Convention applies;

(b) the term "hours of work" should mean time during which a seafarer is required to do work on account of the ship;

(c) the term "hours of rest" should mean time outside hours of work. The term "hours of rest" should not include short breaks;

(d) the term "competent authority" should mean the minister, government department or other authority having power to issue regulations, orders or instructions having the force of law in respect of seafarers' hours of work or rest or the manning of ships;

(e) the term "shipowner" should mean the owner of the ship or the ship operator or the employer or any other person or organization such as the manager or the bareboat charterer who has assumed the responsibility for the operation of the ship, including compliance with the provisions of the Convention.

6. The competent authority, after consultation with the organizations of shipowners and seafarers concerned, should determine, with respect to hours of work and hours of rest, how the following activities should be treated:

(a) musters, fire-fighting and lifeboat drills and drills prescribed by national laws and regulations and by international instruments;

(b) activities required by the master for the safety of the ship, persons on board and cargo when the ship is in danger;

(c) activities required by the master for the purpose of giving assistance to other ships or persons in distress [; and]

[(d) periods of responsibility such as when a machinery space is unmanned but an engineer is on call].

II. Seafarers' hours of work

7. A Member which ratifies the Convention should, by means of laws or regulations, collective agreements, arbitration awards or court decisions, fix either a maximum number of hours of work which should not be exceeded in a given period of time, or a minimum number of hours of rest within the limits set out below.

(1) A Member which ratifies the Convention acknowledges that the normal working hours' standard for seafarers, like that for other workers, should be based on an eight-hour day with one day of rest per week and rest on public holidays. However, this should not prevent a Member from having procedures to authorize or register a collective agreement which determines seafarers' normal working hours on a basis that is different from this standard.

(2) The limits on hours of work or rest should be as follows:

(a) maximum hours worked should not exceed:

(i) 14 hours in any 24-hour period;

(ii) 72 hours a week; [and]

[(iii) 130 hours within a two-week period];

(b) minimum hours of rest should not be less than:

(i) ten hours in any 24-hour period; [and]

[(ii) a minimum of 84 hours per week];

(c) hours of rest may be divided into no more than two periods, one of which should be at least six hours in length; and

(d) the interval between consecutive periods of rest should not exceed 14 hours.

(3) Nothing in subparagraph (2) should prevent a Member from having laws or regulations or a procedure for authorizing or registering collective agreements permitting exceptions to the limits set out which take account of the frequency and length of leave periods and the granting of compensatory leave as well as special situations such as those of watch-standing seafarers and seafarers who work aboard ships on short voyages.

8. A Member which ratifies the Convention should ensure that no person under 16 years of age should work on a ship and no seafarer under 18 years of age should work at night. For the purposes of this point, "night" should mean a period of at least nine consecutive hours, including the interval from midnight to 5 a.m. This provision need not be applied if the effective training of young seafarers between the ages of 16 and 18 in accordance with established programmes and schedules would be impaired.

9. Nothing in the Convention should be deemed to impair the right of the master of a ship to require a seafarer to perform any work necessary for the immediate safety of the ship or for the assistance of persons in distress at sea.

10. (1) A Member which ratifies the Convention should require the maintenance of records of the hours of work or hours of rest of seafarers.

(2) The form of and procedures for keeping the records should be determined by the Member and should include:

(a) the form and content of the records;

(b) the precise intervals at which the data are to be recorded;

(c) the itemizing of hours worked relating to activities listed in point 6;

(d) the certification of the records by the seafarer and the master, or by a person authorized by the master;

(e) the provision of a copy of the records to the seafarer;

(f) the minimum period of retention of the records on the ship and the availability of the records for inspection by the competent authority;

(g) the transmission of a copy of the records to, and the period of retention by, the shipowner; and

(h) the manner in which the above may be achieved by electronic means, where appropriate.

11. The competent authority should examine the records referred to in point 10, at appropriate intervals, to monitor compliance with the hours of work and hours of rest provisions of the Convention.

12. If the records or other evidence indicate infringement of provisions governing hours of work or hours of rest, the competent authority should require that measures, including the revision of the manning of the ship, are taken so as to avoid future infringements.

III. Manning of ships

13. (1) Every ship to which the Convention applies should be sufficiently, safely and efficiently manned, in accordance with the minimum safe manning document issued by the competent authority.

(2) When determining or approving manning levels, the competent authority should take into account:

(a) the need to limit fatigue, to avoid or minimize, as far as practicable, excessive hours of work and to ensure sufficient rest; and

(b) the international instruments identified in the Preamble.

IV. Responsibilities of masters and shipowners

14. (1) The master should take all necessary steps to ensure that the seafarers' hours of work and rest, and the manning of the ship, are in compliance with the Convention;

(2) The shipowner should ensure that the master is provided with the necessary resources to fulfil the obligations of the Convention.

V. Application

15. A Member which ratifies the Convention should be responsible for the application of its provisions to ships [registered in its territory] by means of laws or regulations, except where effect is given by collective agreements, arbitration awards or court decisions.

16. A Member which ratifies the Convention should:

(a) take all necessary measures, including the provision of appropriate sanctions and corrective measures, to ensure the effective enforcement of the provisions of the Convention;

(b) have appropriate inspection services to supervise the application of the measures to be taken in pursuance of the Convention and provide them with the necessary resources; and

(c) after consultation with shipowners' and seafarers' organizations, have procedures to investigate a complaint relating to any matter contained in the Convention.

VI. Final provisions

17. The Convention should revise the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), which had revised the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93), the Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76), and the Hours of Work and Manning (Sea) Convention, 1936 (No. 57).

[18. The Convention should come into force six months after the date on which ratifications of at least five Members, including at least three Members each of which has at least one million gross tonnes of shipping, have been registered.]

Proposed Conclusions with a view to a Recommendation

19. A new instrument concerning seafarers' wages and hours of work and the manning of ships should be adopted.

20. The instrument should take the form of a Recommendation.

21. The instrument should contain a Preamble referring to the Protection of Wages Convention, 1949 (No. 95), the Wages, Hours of Work and Manning (Sea) Convention (Revised) (No. 109), and Recommendation, 1958 (No. 109) the Minimum Wage Fixing Convention, 1970 (No. 13 1), the Seafarers' Annual Leave with Pay Convention, 1976 (No. 146), the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) [the Repatriation of Seafarers' Convention, 1987 (No. 166)1, the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), and the International Convention on Maritime Liens and Mortgages, 1993.

I. General

[22. The provisions of the Recommendation should be applied in conjunction with those of the Convention.]

II. Scope and definitions

23. (1) The Recommendation should apply to every seagoing ship, whether publicly or privately owned, which is [registered in the territory] of the Member and is ordinarily engaged in commercial maritime operations.

(2) To the extent it deems practicable, after consultation with the representative organizations of fishing vessel owners and fishermen, the competent authority should apply the provisions of the Recommendation to commercial maritime fishing.

(3) In the event of doubt as to whether or not any ships are to be regarded as engaged in commercial maritime operations or commercial maritime fishing for the purpose of the Recommendation, the question should be determined by the competent authority after consultation with the organizations of shipowners, seafarers and fishermen concerned.

(4) The Recommendation should not apply to wooden vessels of traditional build such as dhows and junks.

24. For the purposes of the Recommendation:

(a) the term "seafarer" should mean any person defined as such by national laws or regulations or collective agreements who is employed or engaged in any capacity on board a seagoing ship to which the Recommendation applies;

(b) the term "hours of work" should mean time during which a seafarer is required to do work on account of the ship;

(c) the term "hours of rest" should mean time outside hours of work. The term "hours of rest" should not include short breaks;

(d) the term "competent authority" should mean the minister, government department or other authority having power to issue regulations, orders or instructions having the force of law in respect of seafarers' wages, hours of work or rest or the manning of ships;

(e) the term "shipowner" should mean the owner of the ship or the ship operator or the employer or any other person or organization such as the manager or the bareboat charterer who has assumed the responsibility for the operation of the ship; and

(f) the term "basic pay or wages" should mean the pay received for normal hours of work. The term "basic pay or wages" should not include any additional remuneration such as overtime payments, premiums, allowances or leave or benefits in kind.

III. Hours of work and manning

25. [A Member should, after consultation with representative organizations of shipowners and seafarers, apply the provisions of the Convention.]

IV. General provisions concerning seafarers' wages

26. For seafarers whose remuneration includes direct payment for overtime working:

(a) for the purpose of calculating wages, the normal hours of work at sea and in port should not exceed eight hours per day;

(b) time worked in excess of the normal hours of work per day should be regarded as overtime. *

[* *the following two texts have been proposed as a second sentence to subparagraph* (b):

For the purpose of calculating overtime, the basic wage should cover 40 hours per week or 173 hours per month.

or

For the purpose of calculating overtime, the number of normal hours per week or per month should be prescribed by national laws or regulations or by collective agreement;]

(c) the rate or rates of compensation for overtime should be prescribed by national laws or regulations or by collective agreement, but the hourly rate of compensation should not be less than [one and one-quarter times] the basic pay or wages per hour; and

(d) records of all overtime worked should be maintained by the master or a person assigned by the master and signed by the seafarer at regular intervals.

27. For seafarers whose remuneration is fully or partially consolidated:

(a) records should be maintained by the master of hours of work or hours of rest for all seafarers to ensure that maximum hours of work or minimum rest periods established by national laws or regulations or collective agreements are observed;

(b) the collective agreement, articles of agreement, contract of employment or letter of engagement should specify clearly the amount of remuneration payable to the seafarer and where appropriate the number of hours of work expected of the seafarer in return for this remuneration, and any additional allowances which might be due in addition to the consolidated wage, and in which circumstances;

(c) if hourly overtime payments are due after performance of a specified number of guaranteed or fixed overtime hours, the hourly rate for such payments [as well as the remuneration for the included overtime hours] should not be less than [one and one-quarter times] the basic pay or wages per hour; [and]

[(d) remuneration for that portion of the fully or partially consolidated wages representing the normal hours of work should not be less than the minimum wage provided for in the Recommendation].

28. National laws or regulations or collective agreements may provide for compensation for overtime or work performed on the weekly day of rest and on public holidays by at least equivalent time off duty and off the ship or additional leave in lieu of remuneration or any other compensation so provided.

29. The following principles should be taken into account by the competent authority, after consultation with the representative organizations of seafarers and shipowners, when adopting laws or regulations concerning the wages of seafarers:

(a) the principle of equal remuneration for work of equal value should apply to all seafarers employed upon the same ship without discrimination based upon race, colour, sex, religion, political opinion, national extraction or social origin;

(b) the amount of wages or wage rates should be specified in the articles of agreement or other approved agreement. The agreement should be carried on board the ship. Information on the amount of wages or wage rates should be made available to each seafarer, either by providing at least one signed copy of the relevant information to the seafarer in a language which the seafarer understands, or by posting a copy of the agreement in a place accessible to the crew or by some other appropriate means;

(c) wages should be paid in legal tender or, where appropriate, by bank transfer, bank cheque, postal cheque or money order;

(d) wages should be paid monthly or at some other regular interval, and on termination of engagement all remuneration due should be paid without undue delay;

(e) wages should be paid directly to the seafarer or to the seafarer's designated bank account unless he or she requests otherwise;

(f) subject to subparagraph (g) below, the shipowner should impose no limit on the seafarer's freedom to dispose of his or her remuneration;

(g) deductions from remuneration should be permitted only if:

(i) there is an express provision therefor in national laws or regulations or in an applicable collective agreement;

(ii) the seafarer has been informed, in the manner deemed most appropriate by the competent authority, of the conditions for such deductions; and

(iii) they do not in total exceed the limit that may have been established by national laws or regulations or collective agreements or court decisions for making such deductions;

(h) no deductions should be made from a seafarer's remuneration in respect of obtaining or retaining employment;

(i) the competent authority should have the right to inspect stores and services provided on board ship to ensure that fair and reasonable prices are applied for the benefit of the seafarers concerned; and

(j) to the extent that seafarers' claims for wages and other sums due in respect of their employment are not secured in accordance with the provisions of the International Convention on Maritime Liens and Mortgages, 1993, such claims should be protected in accordance with the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).

30. A Member should, after consultation with shipowners' and seafarers' organizations, have procedures to investigate a complaint relating to any matter contained in this Recommendation. [Representatives of shipowners' and seafarers' organizations should participate in the operation of such procedures].

V. Provisions concerning minimum wages for seafarers

31. (1) A Member should, after consulting representative organizations of shipowners and seafarers, establish procedures for determining minimum wages for seafarers, without prejudice to the principle of free collective bargaining or the procedures laid down by the competent courts. [The procedures should include a tripartite body consisting of representatives of a Member, shipowners and seafarers.]

(2) When establishing such procedures, due regard should be given to international labour standards concerning minimum wage-fixing, as well as the following principles:

(a) the level of minimum wages should take into account the nature of maritime employment and seafarers' normal hours of work;

[(b) consultation of shipowners' and seafarers' representative organizations should be required to adjust the level of minimum wages to changes in the cost of living and in the needs of seafarers;]

(c) the competent authority should ensure, by means of a system of supervision and sanctions, that remuneration paid is not less than the rate or rates fixed; and

(d) the competent authority should ensure that any seafarer who has been paid at a rate lower than the minimum rate is enabled to recover, by an inexpensive and expeditious judicial or other procedure, the amount by which he or she has been underpaid.

VI. Minimum monthly basic pay or wage figure for able seamen

32. For the purposes of this part of the instrument, the term "able seaman" means any seafarer who, by national laws or regulations, or by collective agreement, is deemed to be competent to perform any duty which may be required of a rating serving in the deck department, other than the duties of a leading or specialist rating.

33. The basic pay or wages for a calendar month of service for an able seaman should not be less than US$[ ][1] or £[ ][1] as of [date][1] or any updated figure recommended to the Governing Body by the Joint Maritime Commission or by a Committee of the Joint Maritime Commission agreed by the Commission and authorized by the Governing Body to recommend such a figure. [Any updated figure should be consistent with the Revised Formula (or subsequent update) contained in the JMC resolution of 25 October 1991].

34. Nothing in this part of the Recommendation should be deemed to prejudice arrangements agreed between shipowners or their organizations and seafarers' organizations with regard to the regulation of standard minimum terms and conditions of employment, provided such terms and conditions are recognized by the competent authority.

35. The Recommendation should revise the Wages, Hours of Work and Manning (Sea) Recommendation, 1958 (No. 109).

Discussion by the Tripartite Meeting on Maritime Labour Standards in plenary sitting

[The report of the Committee on Wages, Hours of Work and Manning was considered by the Meeting at its sixth plenary sitting on 9 December 1994.]

Mr. Glover (Government, United States; Reporter of the Committee) noted that the Office report had indicated that previous Conventions on the subject of wages, hours of work and manning had failed to enter into force because they linked hours of work and manning, on one hand, with wages, on the other. The Committee therefore proposed a less complex Convention on hours of work and manning and a more comprehensive Recommendation on all three issues.

[1] Monetary amounts and effective date to be determined by resolution of the 27th Session of the Joint Maritime Commission.

The provisions of the Convention covered such issues as limits of hours of work and minimum periods of rest, record keeping and responsibilities of member States, and it allowed for the necessary degree of flexibility. The proposed Recommendation included a reference to the Convention, and it had detailed provisions concerning wages.

Mr. Lindemann (Shipowner delegate, Germany; Vice-Chairman of the Committee) considered the agenda item concerning wages, hours of work and manning as being the most difficult of the four items for debate at the Meeting. The proceedings provided proof that these issues indeed were contentious. The Shipowner members reminded the Committee that the preceding Conventions on these subjects did not enter into force; this meant that a different approach was now necessary.

When the Committee started its discussions the Shipowner members had stated that any revised Convention should be straightforward and confined to broad principles rather than detail, so as to encourage ratification and enforcement. Therefore, provisions dealing with wages should be sufficiently flexible to encourage acceptance by countries with widely different domestic costs of living. Furthermore, provisions concerning hours of work should be applicable to different ship types, trades and those with different manning arrangements. It should be recognized that safe and successful ship operations depend on achieving the right blend of these elements. The Shipowner members were quite content with what had been achieved and that this had been done without, except once, resorting to voting.

Mr. Orrell (Seafarer delegate, United Kingdom; Vice-Chairman of the Committee), on behalf of his group, underlined that seafaring was a distinctive and demanding profession, literally a different world than life ashore. It was a dangerous profession, and, to illustrate this, statistics on ships lost in the last 30 years and lives lost in the last ten were cited. Conditions continued to deteriorate and in recent years traditional maritime fleets had declined dramatically while those of flags of convenience and international registers had expanded greatly. Registers based in developing countries did not always have the necessary resources and expertise to deal with follow-up of accidents, and on some their safety records were as much as 40 times worse than the best.

The Seafarer members stressed that the human element was the key issue, completely overshadowing technical and mechanical faults. Despite this there was little research and statistics on this aspect and little systematic assessment of human elements in casualties. Action was, therefore, needed. Shipowners needed to make a fundamental change in their attitudes towards seafarers, and governments needed to be more vigilant in policing standards. In a recent survey, seafarers had indicated that fatigue and working hours had worsened in the past three to ten years. Seafarers were reporting regular work-weeks of 80 to 90 hours and over and continuous working periods of 15 to 20 hours. This was largely the result of cutbacks in manning levels, increases in duties and workloads, increased time on board and faster turn-arounds. The dangers of fatigue could not be overemphasized. The introduction of work-time limitations and rest-time minimums and more research on the mental and physical aspects of existing working hours and patterns at sea was needed. The Seafarer members saw the work done by the Committee as a start. Issues such as manning and the impact of high maximum daily hours over long periods would be addressed at the Conference.

Mr. Ohndorf (Government, Germany; Chairman of the Committee) noted that the two spokesmen had said how difficult the task had been to reach consensus. The arguments had been energetic but, in the end, there was a willingness to compromise. Only one vote had been needed but later in the discussion the provision concerned was unanimously dropped. Although a few items had been left in square brackets, the text would be a good basis for future work. He hoped the work accomplished would lead to a successful Conference. He thanked Mrs. Olsen from Denmark for her excellent work when presiding over the Working Party which dealt with the draft conclusions on a Recommendation.

The Meeting unanimously adopted the report of the Committee on Wages.

The Meeting then proceeded to examine the Proposed Conclusions section by section.

The Meeting unanimously adopted the Proposed Conclusions concerning seafarers' wages, hours of work and the manning of ships.

III. Proposed texts

The texts of a proposed Convention concerning seafarers' hours of work and the manning of ships and a proposed Recommendation concerning seafarers' wages, hours of work and the manning of ships are given below. They are based on the Conclusions adopted by the Tripartite Meeting on Maritime Labour Standards, the relevant points of which have been rearranged and to some extent redrafted in order to avoid repetition and inconsistencies. In preparing the texts, the Office has attempted to ensure that the texts retain the substance of the points adopted by the Tripartite Meeting. However, when it was felt that they could be clarified or improved, the Office has made the relevant changes and an explanation of these changes is given in the paragraphs which follow.

The Office draws the attention of the Conference to the related work which has been and is under way in other fora. The Joint IMO/ILO Committee on Training, at its Tenth Session (December 1994) discussed limitations on working hours of watchkeepers specifically and the International Maritime Organization in July 1995 adopted amendments to the Annex of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers. The Commission of the European Communities is considering a Directive regulating hours of work on board ships. Where relevant the Office has included reference to this work.

Proposed Convention

Preamble

A Preamble may be relevant to the understanding and interpretation of an ILO Convention, since the Convention is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context, of which the Preamble forms part, and in the light of the object and purpose of the Convention. ILO practice is to limit references in the Preamble to other instruments that have a direct relevance to the purpose or purposes of the proposed new instrument. Point 3 of the Conclusions adopted by the Tripartite Meeting contains a reference, inter alia, to the relevant provisions of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109) and Recommendation, 1958 (No. 109). As these instruments will be superseded by the new instruments, the Office has listed them together with the other relevant instruments referred to in the Preamble of the proposed Convention. The Office has introduced a preambular paragraph referring to the entry into force of the United Nations Convention on the Law of the Sea, 1982, in response to an appeal made by the United Nations General Assembly in resolution 49/28 of 19 December 1994 to identify measures that may need to be taken "with a view to ensuring a uniform, consistent and coordinated approach to the implementation of the provisions of the Convention throughout the United Nations system". This insertion by the Office is also to ensure consistency between the various ILO instruments under discussion.

Part I. Scope and definitions

Article 1 [1]

The Office has made changes to Point 4(1) of the Conclusions adopted by the Tripartite Meeting (new Article 1(1)) because, while ILO maritime instruments have traditionally referred to ships "registered in the territory", several Government participants in the Tripartite Meeting had expressed concern that this was not an appropriate term in all cases. They did not wish to

[1] In this Article, and throughout the texts of the Convention and Recommendation, the Office has attempted to use gender-neutral terminology. This has not always been possible, but regardless, the text should always be considered to apply equally to both men and women.

be held accountable for ships that were still on the registry of their country but were outside their effective jurisdiction and control as regards certain matters covered by the Convention. The particular difficulty in some countries is that a ship might be on the register (albeit suspended) of one country for certain purposes but flying the flag of another country (and of course also registered there), as in the case of some bareboat charters. A bareboat charter may result in the split of jurisdiction as regards real rights (e.g. liens to cover wage claims) and non-real rights (e.g. crew safety matters). The Office has therefore proposed adding text to permit identification of the State that would have responsibility as regards a particular ship for a particular purpose. For both real rights and non-real rights to be protected, the draft Convention would have to be in force for both States involved in a bareboat charter. In order to avoid casting possible doubt on ILO maritime instruments that are already in force, the Office prefers proposing a separate stipulation to deal with the exceptional case rather than departing from the usual term "registered in the territory".

The Conclusions do not set a requirement for the minimum tonnage of a ship to be covered by the proposed Convention. However, Article 2 of Convention No. 109 provides that the Convention does not apply to ships of less than 500 gross register tons. Attention is drawn to this in the event a minimum tonnage level is considered desirable in the new instrument. Alternatively, this could be left to ratifying States to decide when determining what a "seagoing ship" is for the purposes of the Convention.

Article 1(2) (Point 4(2)) provides that, to the extent it deems practicable, after consulting with the representative organizations of fishing vessel owners and fishermen, the competent authority shall apply the provisions of the Convention to commercial maritime fishing. The Office draws the attention of the Conference to the Limitation of Hours of Work in the Fishing Industry Recommendation, 1920, which, inter alia, provides that:

> the International Labour Conference recommends that each Member of the International Labour Organization enact legislation limiting in this direction the hours of work of all workers employed in the fishing industry, with such special provisions as may be necessary to meet the conditions peculiar to the fishing industry in each country; and that in framing such legislation each Government consult with the organizations of employers and organizations of workers concerned.

Article 1(2) would therefore be without prejudice to the objectives established in that Recommendation.

Article 2

Article 2(c) (Point 5(c) of the Conclusions) does not define the term "short breaks", but the Office understands that the term would mean, for example, coffee and tea breaks. As no specific reference has been made to meal breaks, it is understood that these would be included in the "hours of rest".

The definition of the term "shipowner" in Article 2(e) (Point 5(e) of the Conclusions) has been slightly altered by the Office. It was originally based on a similar definition for the term "company" included in the IMO's International Safety Management Code (ISM Code). The Office has changed this so that it is consistent with the United Nations Convention on Conditions for Registration of Ships, which provides in Article 6(4) that:

> A State should ensure that ships flying its flag carry documentation including information about the identity of the owner or owners, the operator or operators or the person or persons accountable for the operation of such ships, and make available such information to port state authorities.

Article 3

The heading sentence of Article 3 (Point 6 of the Conclusions) provides that the competent authority, after consulting the organizations of shipowners and seafarers concerned, shall determine how certain activities shall be treated with respect to hours of work and hours of rest. The Office observes that this provision does not include a reference to collective agreements. However, Article 14 (Point 15 of the Conclusions), which applies to the whole of the proposed

Convention, does provide for the possibility of dealing with these matters through collective agreements.

In Article 3(c) (Point 6(c) of the Conclusions) the words "at sea" have been added to the end of the provision so that it is consistent with Article 8 (Point 9 of the Conclusions).

According to Article 3(d) (Point 6(d) of the Conclusions) it is for the competent authority to determine, after tripartite consultations, how "periods of responsibility such as when a machinery space is unmanned but an engineer is on call" should be treated. The Tripartite Meeting did not agree on this particular point and this will require the attention of the Conference. The Office notes, however, that Article 9 (Point 10(c) of the Conclusions) would require, regardless of how the competent authority decides to consider "periods of responsibility" that time spent on this activity should be accounted for in the ship's records and reviewed by the competent authority under the mechanism provided in accordance with Articles 9, 10 and 11 (Points 10, 11 and 12 of the Conclusions). The Office has left the text in square brackets, and it has changed the word "unmanned" to "unattended" in order to make the text sex-neutral; the term "periodically unattended machinery spaces" has been utilized in Chapter II-1, Part E, of the SOLAS Convention.

The Office further draws attention to views expressed by some delegates at the Tripartite Meeting that Point 6(d) (Article 3(d)) should not be listed together with Point 6(a), (b) and (c) (Article 3(a), (b) and (c)) as these deal specifically with emergency matters. While the Office has some sympathy for this view, it seems reasonable that these activities, which will require decisions by the competent authority as to how they should be considered with regard to hours of work, be kept in a single Article. No changes are therefore proposed.

Part II. Seafarers' hours of work

The Office has divided Point 7 of the Conclusions into three Articles: Articles 4, 5 and 6, with the substance as set out in the proposed Convention.

Article 4

The lead sentence of Point 7 of the Conclusions provided that "A Member which ratifies the Convention should, by means of laws or regulations, collective agreements, arbitration awards or court decisions, fix either a maximum number of hours of work which should not be exceeded in a given period of time, or a minimum number of hours of rest within the limits set out below." A reference to collective agreements here might be read as giving the member State a role that would be inconsistent with the principles of freedom of association and free collective bargaining. The phrase "by means of laws or regulations, collective agreements, arbitration awards or court decisions" is unnecessary as this is already provided, as possible means of application for the whole of the Convention, by Article 14. The Office therefore removed that text. Finally, the phrase "which shall be provided in a given period of time" has been added after the reference to the "minimum number of hours of rest" to make the sentence internally consistent.

Article 5

The Office notes that the word "acknowledge" in Point 7(1) of the Conclusions (Article 5) places no specific responsibility on a member State which ratifies the Convention. The purpose of this provision is to emphasize that the maximum hour limitations provided in Article 6(1) are not to be considered normal hours of work. Though the first sentence would appear to set a rigid standard, the second sentence, which provides that "this shall not prevent collective agreements from having provisions from fixing seafarers' normal hours of work on a different basis" allows for considerable flexibility. Bearing in mind this flexibility, the word "acknowledges" has been replaced with the word "shall". Point 7(1) of the Conclusions also referred to the "registration" or "authorization" of collective agreements. As the concept of

authorization is counter to the principles of freedom of association and free collective bargaining, the text has been redrafted. The first sentence also includes the phrase "like other workers" with regard to an eight-hour day with one day of rest per week and rest on public holidays. The Office observes that the eight-hour day may or may not apply to other workers in the member State, depending on whether their country has ratified and applied the Hours of Work (Industry) Convention, 1919, or other instruments concerning hours of work, or otherwise established an eight-hour work-day. The phrase which is in any event not necessary to the establishing of an obligation here, has therefore been removed.

Article 6

The Tripartite Meeting did not agree on limitations of maximum hours worked within a two-week period (130 hours) — see Point 7(2)(a)(iii) — and the minimum 84 hours of rest per week (Point 7(2)(b)(ii). It will be for the Conference to determine the actual figures. The text is therefore still in square brackets in Article 6(1)(a)(iii) and (b)(ii) of the proposed Convention.

The Office also draws the attention of the Conference to the possible need for clarification in Article 6(1)(a)(ii) (Point 7(2)(a)(ii) of the Conclusions), which sets maximum working hours at 72 hours a week. The Tripartite Meeting adopted this proposal based on a six-day week, which had been derived from the weekly day of rest stipulated in Article 5 (Point 7(1) of the Conclusions). However, this may not be clear to those reading the Conclusions who did not participate in the Meeting. As noted above, Article 6(1)(a)(ii) concerns a *six*-day week. This figure would result in an average of 72:6 = 12 hours rest per day over a period of one week. However, Article 5 (Point 7(1) of the Conclusions) permits the determination of seafarers' normal working hours on a basis that is different from the standards of an eight-hour day with one day of rest per week and rest on public holidays, and would leave open the possibility of a *seven*-day week. The limitation on maximum working hours for a seven-day week (a week without a day of rest) remains unclear. For example, it might be considered as 72 hours of work over seven days, thus resulting in 72:7 = 10.3 hours of work per day in a seven-day week. If this is not intended, a separate limit on the maximum number of hours in a seven-day work-week might be required. The Office therefore draws the attention of the Conference to the possible need for provision specifying the "maximum hours in a weekly period for a seafarer who is not provided a day of rest in that week".

Point 7(3) of the Conclusions provided that "Nothing in subparagraph (2) [of Point 7] should prevent a Member from having laws or regulations or a procedure for authorizing or registering collective agreements permitting exceptions ...". As in Article 5 (Point 7(1) of the Conclusions) the wording has been changed to remove the concept of "registration" or "authorization" of collective agreements and to otherwise make it consistent with Article 4.

The Office observes that Article 6 (Point 7(3) of the Conclusions) provides for the exceptions to the limits "which take account of the frequency and length of leave periods and the granting of compensatory leave". The Conference may wish to consider whether this provision requires further clarification or is sufficient.

As concerns the provision providing exceptions for the special situations such as those of watchstanding seafarers and those who work aboard ships on short voyages, this is quite broad due to the inclusion of the words "such as", which are not restrictive. This passage would seem, for example, to allow the competent authority to permit exceptions to the limits for arrival and departure from port (an issue raised in the Committee on Wages, Hours of Work and Manning of the Tripartite Meeting). The Conference may wish to consider whether further qualification of the term "special situations" is necessary or whether the current text is sufficient.

The term "ships on short voyages" was not defined in the Conclusions. The term therefore could be interpreted quite differently by member States. In order to ensure that, at the very least, each Member defines the term, the Office has added the words "as defined by the

competent authority" after the words "ships on short voyages". If the Conference wishes to provide further clarity on this exception, the Office notes that an example of such definition exists in Convention No. 109, in Article 12, which utilizes the term "near trade ships" and defines it as follows:

the term "near trade ship" means a vessel exclusively engaged in voyages upon which it does not proceed farther from the country from which it trades than the nearby ports of neighbouring countries within geographical limits which:

(i) are clearly specified by national laws, regulations or by collective agreement between organizations of shipowners and seafarers;

(ii) are uniform in respect of the application of all the provisions of this Part of the Convention;

(iii) have been notified by the Member when registering its ratification by a declaration annexed thereto; and

(iv) have been fixed after consultation with the other Members concerned;

The Office understands that exceptions in Article 6 (Point 7(3) of the Conclusions) would not result in exceptions to the requirements contained in other Articles of the proposed Convention.

The Office would like to draw the attention of the Conference to the revised International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers, 1978, which in its *Annex, Chapter VIII, Watchkeeping, Regulation VIII/1, Fitness for duty*, requires administrations to set rest periods for watchkeeping personnel and ensure that watchkeepers are rested before assuming watches. The *Seafarers' Training, Certification and Watchkeeping (STCW) Code, Part A, Mandatory standards regarding provisions of the Annex to the STCW Convention, Chapter VIII, Standards regarding watchkeeping, section A-VIII/1, Fitness for duty*, provides that:

1. All persons who are assigned duty as an officer in charge of a watch or as a rating forming part of a watch shall be provided a minimum of ten hours of rest in any 24-hour period.
2. The hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length.
3. The requirements for rest periods laid down in paragraphs 1 and 2 need not be maintained in the case of an emergency or drill or in other overriding operational conditions.
4. Notwithstanding the provisions of paragraphs 1 and 2, the minimum period of ten hours may be reduced to not less than six consecutive hours provided that any such reduction shall not extend beyond two days or not less than 70 hours of rest are provided each seven-day period.
5. Administrations shall require that watch schedules be posted where they are easily accessible.

Guidance on these issues is provided in the *Seafarers' Training, Certification and Watchkeeping (STCW) Code, Part B, recommended guidance regarding provisions of the STCW Convention and its Annex, Chapter VIII, guidance regarding watchkeeping, section B-VIII/1, guidance regarding fitness for duty, prevention of fatigue*.

Furthermore, the Office draws the attention of the Conference to Regulation I/3, *Principles governing near-coastal voyages*, in the Annex to the STCW Convention, which, inter alia, calls on parties which define the term "near-coastal voyages" to communicate that definition to the IMO Secretary-General.

Article 7

Article 7 (Point 8 of the Conclusions) concerns age restrictions for persons working on board ship and young seafarers working at night. The Office notes that, with regard to minimum age, the text adopted in the Conclusions may conflict with existing ILO standards which deal primarily with this issue. The Minimum Age (Sea) Convention, 1920, the Minimum

Age (Sea) Convention (Revised), 1936 and the Minimum Age Convention, 1973, already contain provisions on minimum age. Bearing in mind that these three Conventions are all in force and are included in the Appendix to Convention No. 147, the Office recommends the deletion of the text of the first sentence of Point 8 providing that "no person under 16 years of age should work on a ship".

With regard to restrictions on young seafarers' work at night, the Protection of Young Seafarers Recommendation, 1976 (No. 153), provides that, except in training programmes and emergencies, no "young seafarer" (defined as a young person under 18 years of age employed on board a seagoing ship) should work at night (defined as a period of at least nine consecutive hours between times before and after midnight to be prescribed by national laws or regulations or collective agreements). However, as there is no Convention which restricts night work specifically for young seafarers, and as the Committee has expressed its interest in including such restrictions in the proposed Convention, the Office recommends that the remainder of Article 7 (Point 8 of the Conclusions) be retained.

Article 9

The Office understands that the record-keeping provisions in Article 9 (Point 10 of the Conclusions) shall apply to *all* seafarers, regardless of whether they are covered by the exceptions in Article 6(3) (Point 7(3) of the Conclusions) from the limitations specified in Article 6(1) (Point 7(2) of the Conclusions). The Office has made a few changes to Point 10 (Article 9) of a non-substantive nature. However, in Article 9(e) it has changed the text to indicate that the seafarer would receive a copy of the records *pertaining to him or her* in order to clarify that each seafarer would not receive the records of the entire crew.

In Article 9(g) the word "minimum" has been added before "period of retention" for reasons of clarity.

Article 10

This Article concerns monitoring by the competent authority of compliance by the shipowner with the provisions of the Convention. The Office observes that Point 11 of the Conclusions (Article 10 of the proposed Convention) did not indicate at what "appropriate intervals" the records of hours of work or rest are to be examined by the competent authority. It will be for the Conference to consider whether more specific guidance should be provided. The text remains substantively unchanged, though a minor change has been made to reflect that the competent authority monitors compliance with national requirements implementing the Convention, rather than compliance with the Convention itself.

Article 11

The Office notes that Article 11 (Point 12 of the Conclusions) might be read to *require* the revision of the manning of ships if records or other evidence indicate infringement of provisions governing hours of work or hours of rest. The Office understands that revision of manning of the ship is one of *several* possible actions which might be taken to avoid future infringements (i.e., infringement would not necessarily result in a change to the manning of the ship). The text remains unchanged.

Part III. Manning of ships

Article 12

In Article 12(2)(a) (Point 13(2)(a) of the Conclusions) the order of the wording has been changed to place the ideas in a more logical order.

Part IV. Responsibilities of masters and shipowners

Article 13

The two subparagraphs of Point 14 of the Conclusions (Article 13 of the proposed Convention) have been combined. Text has been added to reflect that the shipowner and master are to comply with the requirements by the member State rather than directly with the Convention.

Part V. Application

Article 14

The words "registered in its territory", which appeared in Point 15 of the Conclusions, have been removed as this is already covered by Article 1.

Part VI. Final provisions

Article 16

The Office has added the sentence "All of these above-listed Conventions shall cease to be open to ratification by a Member as from the date the present Convention has come into force" in order to clarify the status of those instruments after the adoption of the new Convention.

Article 17

The Tripartite Meeting left Point 18 of the Conclusions (Article 17 of the proposed Convention), which concerned the requirements for the Convention to entry into force, in square brackets and requested the Office to provide information on entry-into-force requirements for other ILO maritime labour instruments.

The requirements for entry into force of ILO maritime instruments have varied. Conventions Nos. 7, 8, 9, 15, 16, 22 and 23 provide that they would enter into force immediately following the registration of two ratifications. Conventions Nos. 27, 53, 55, 56, 58, 74, 108, 112, 113, 114, 125, 126, 134, 145, 146, 163, 164, 165 and 166 provide that they would enter into force 12 months after the date on which they have been ratified by two member States. Conventions Nos. 68 and 69 provide that they would come into force six months after they were ratified by nine out of a list of 23 specified countries, five of which had at least 1 million gross register tons of shipping. Convention No. 71 would come into force six months after it had been ratified by five countries from a list of 23 specified countries, including three with at least 1 million gross register tons of shipping. Conventions Nos. 73 and 92 provide that they would come into force six months after ratification by seven of 23 specified countries, at least four of which had at least 1 million gross register tons of shipping. Convention No. 109 provides it would enter into force six months after it had been ratified by nine of 27 specified countries, at least five of which had 1 million gross register tons of shipping. Convention No. 109 also requires that the aggregate tonnage of shipping possessed at the time of registration by members whose ratifications had been registered must not be less than 15 million gross register tons. Convention No. 147 provided that it would come into force 12 months after ratification by at least ten Members with a total share of world shipping gross tonnage of 25 per cent (it also required that States ratifying the instrument first ratified certain IMO instruments). The Conventions variously provide that they would come into force for each Member either immediately or six or 12 months following ratification by that State. The text of Point 18 of the Conclusions (Article 17) therefore is not inconsistent with the provisions of existing ILO maritime labour instruments. However, the Conference may wish to note that maritime Conventions with more stringent requirements with regard to ratification often have required a longer period to enter into force or have not entered into force at all. The square brackets have been removed.

Proposed Recommendation

The text of the proposed Recommendation is likewise based on the Conclusions adopted by the Tripartite Meeting on Maritime Labour Standards, the relevant points of which have been to some extent redrafted for the sake of style and clarity. Important drafting changes are set out below.

Preamble

Some slight changes have been made to the list of international instruments contained in the Preamble. The references to Convention No. 109 and Recommendation No. 109 included in the first preambular clause have been deleted as they are mentioned more appropriately in the second preambular clause. The square brackets around "Repatriation of Seafarers Convention, 1987" have been removed because the instrument is clearly relevant to the issue of wages due to the provisions of its Article 4, in particular paragraph 5, which provides that:

> The shipowner shall not require the seafarer to make an advance payment towards the cost of repatriation at the beginning of his or her employment, nor shall the shipowner recover the cost of repatriation of his or her employment, nor shall the shipowner recover the cost of repatriation from the seafarer's wages or other entitlements except as provided in paragraph 3 above.

After the preambular clause "Having determined that these proposals shall take the form of a Recommendation" the words "supplementing the Seafarers' Hours of Work and Manning of Ships Convention (Revised), 1956" have been added. This is to indicate that the Recommendation is to be read with the provisions of the Convention.

Paragraph 1

Point 22 of the Conclusions, as well as the heading "General", has been deleted by the Office as the relationship between the Recommendation and the Convention has been established in the Preamble as described above.

I. Scope and definitions

The Office refers to its comments above on the issue as regards the proposed Convention.

Paragraph 2

Paragraph 2(a) (Point 24(f)) has been redrafted. The Office has added the word "paid" before the word "leave".

The Tripartite Meeting introduced a concept new to the Office — that of "consolidated wages" — under Point 27 of the Conclusions (Paragraph 4 of the proposed Recommendation). This term was not defined. The Office has provided a possible definition in Paragraph 2(c) of the proposed Recommendation.

The definition of "shipowner" in paragraph 2(g) (Point 24(e) of the Conclusions) has been changed, as in the draft Convention, to make it consistent with the United Nations Convention on Conditions for the Registration of Ships Convention.

Point 25 of the Conclusions, as well as the heading "Hours of work and manning", has been deleted as the relationship between the Recommendation and the Convention has been established in the Preamble of the Recommendation.

II. Seafarers' wages

Paragraph 3

In the leading sentence of Point 26 of the Conclusions (Paragraph 3), the words "direct payment for overtime working" have been replaced with the words "separate compensation for overtime worked". This is not intended to change the substance of this provision but only to improve its clarity.

The Office observes that there are some differences between the "normal hours of work" cited in Paragraph 3 (Point 26) and those cited in Article 5 of the proposed Convention. While it is evident that the Convention concerns limitations on hours of work for the purpose of ensuring adequate rest and mitigating fatigue, and the Recommendation focuses primarily on the issue of hours of work as concerns rates of pay (including overtime pay), the Conference may wish to consider whether or not the different treatment of normal hours of work might present problems when applied by member States.

The proposed Convention provides that normal hours of work shall be based on an eight-hour day with one day of rest per week and rest on public holidays, but it does provide that this shall not prevent collective agreements from fixing seafarers' hours of work on a different basis. Point 26 of the Conclusions (new Paragraph 3) provides that, for the purpose of calculating wages, normal hours of work should not exceed eight hours per day. There is no mention of the day of rest or rest on public holidays. Paragraph 3(b) (Point 26(b) of the Conclusions) provides that time worked in excess of the normal hours of work per day should be regarded as overtime, and Paragraph 3(c) (Point 26(b)) provides two possible texts concerning the calculation of overtime. The first would specify exactly the number of hours per week and per month to be covered by the basic pay or wages; the second would leave this to national laws or regulations or collective agreements. The second option could conflict with Point 26(a) (new Paragraph 3(a)), which calls specifically for an eight-hour day.

Paragraph 3(d) (Point 26(c) of the Conclusions), inter alia, provides that "the rate or rates of compensation for overtime" "should not be less than [one-and-one-quarter times] the basic pay or wages per hour". The Office, in its Proposed Conclusions for the Tripartite Meeting, and based upon the results of the survey of member States conducted before the meeting, had used the figure of one-and-one-half times the basic pay or wages per hour. The Office has now reworded this provision to improve clarity, but leaves the matter of rates of pay for overtime worked to the Conference.

Paragraph 4

The Office again points to the importance of a definition of "consolidated wages" contained in Paragraph 2(c) of the proposed Recommendation.

In Point 27 of the Conclusions the leading sentence utilized the term "remuneration". The Office notes that this term covers more than wages (it would cover, for example, bonuses and cash medical benefits). The remainder of the Point concerns only wages. The term "remuneration" therefore has been replaced by the term "wages".

In Point 27(a) of the Conclusions (new Paragraph 4(a)), the words "established by national laws or regulations or collective agreements" have been deleted as this is covered by Article 14 of the Convention.

In Point 27(b) of the Conclusions (new Paragraph 4(b)) the text concerning "the collective agreements, articles of agreement, contract of employment or letter of engagement" has been changed to "the collective agreement, articles of agreement, contract of employment and letter of engagement". This is to make the provision consistent with the Seamen's Articles of Agreement Convention, 1926.

Point 27(c) of the Conclusions (new Paragraph 4(c)) has been revised to make it consistent with the previous provision. The words "as well as the remuneration for included overtime hours", which had been left in square brackets by the Tripartite Meeting, are inconsistent with the concept of a consolidated wage, which would seem to include both normal and overtime pay together. The Office therefore has not included this text in Paragraph 4(c). The concern it represents, however, would be safeguarded by Point 27(d) (new Paragraph 4(d)).

For the same reasons as noted under Paragraph 3(c) of the proposed Recommendation (Point 26(c) of the Conclusions), the Office has left the words "one-and-one-quarter times" in square brackets.

Point 27(d) of the Conclusions (new Paragraph 4(d)) had been left in square brackets by the Tripartite Meeting. The text provides that remuneration for that part of the fully or partially consolidated wages representing normal hours of work should not be less than the minimum provided for in the Recommendation. The Office believes that this text is necessary. Without it the minimum basic wage figure for able seamen might be considered to apply, on the one hand, only to normal hours and, on the other hand, to both normal and overtime working hours (though this would seem to be contrary to the meaning of the term "basic pay or wages" as defined in Paragraph 2(a) of the proposed Recommendation (Point 24(f) of the Conclusions). Such widely different interpretations might diminish the value of such a figure.

Point 27(d) of the Conclusions (Paragraph 4(d)) referred to the "minimum wage provided for in the Recommendation". The Office has changed this to "the applicable minimum wage". This new text would make the text applicable to seafarers other than able seamen and it would allow for the setting of the minimum wage by collective agreement as provided for in Point 34 of the Conclusions (new Paragraph 11).

The Office has not included the square brackets in Paragraph 4(d).

Paragraph 6

The leading sentence of Point 29 of the Conclusions (new Paragraph 6) has been modified to include a reference to collective agreements in order to make it consistent with Point 34 (new Paragraph 11).

A slight change has been made to Point 29(c) (new Paragraph 6(c)) to reflect that bank transfers, bank cheques, postal cheques and money orders may all be paid in legal tender and are not simply an alternative to legal tender.

In Point 29(a) (new Paragraph 6(e)), the Office has added the words "in writing" to the end of the sentence.

Paragraph 7

The Office observes that the second sentence (square-bracketed) of Point 30 (new Paragraph 7) of the Conclusions is inconsistent with the provisions of the proposed Labour Inspection (Seafarers) Convention and the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) — neither of which call for tripartite participation in the *operation* of procedures for the investigation by Members of complaints. The Conference may wish to reconsider the inclusion in Paragraph 7 of the proposed Recommendation.

III. Minimum wages

Paragraph 8

The Office observes that Point 31 of the Conclusions (new Paragraph 8) would not require a Member to fix minimum wage rates if this was accomplished through collective bargaining. However, to further clarify this point, the sentence providing that "The procedures should include a tripartite body consisting of representatives of a Member, shipowners and seafarers" has been replaced with "Representative organizations of shipowners and seafarers should participate in the operation of such procedures". This removes the necessity of the reference to consultation contained in Point 31(b) (new Paragraph 8.2(b)), which has therefore been redrafted. The requirement to adjust the level of minimum wages has been replaced with text providing that "the level of the minimum wages should be adjusted to take into account changes in the cost of living and in the needs of seafarers".

IV. Minimum monthly basic pay or wage figure for able seamen

Paragraph 10

The text of Point 33 of the Conclusions included a square bracket for figures to be adopted by the 27th Session of the Joint Maritime Commission (JMC) at its meeting on 9 December 1994 (immediately after the Tripartite Meeting). The results of the 27th JMC have now been included in Paragraph 10. It is noted that the JMC also recommended that the minimum basic wage figure for able seamen be presented in the United States dollars only and the reference to British pounds sterling has therefore been removed.

The last sentence of Point 33 of the Conclusions referred to the "revised formula (or subsequent update) contained in the JMC resolution of 25 October 1991". This would unnecessarily restrict the means by which a formula could be updated and presupposes the continued activity of the Joint Maritime Commission, which meets at the discretion of the Governing Body. The sentence therefore has not been included in Paragraph 10 of the proposed Recommendation.

PROPOSED TEXTS

(English version)

The following are the English versions of (A) the proposed Convention concerning seafarers' hours of work and the manning of ships and (B) the proposed Recommendation concerning seafarers' wages and hours of work and manning, which are submitted as a basis for a single discussion at the 84th (Maritime) Session of the Conference as the second item of the agenda.

A. Proposed Convention concerning seafarers' hours of work and the manning of ships

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fourth Session on ... 1996, and,

Noting the provisions of the Merchant Shipping (Minimum Standards) Convention, 1976, and

Recalling the relevant provisions of the following instruments of the International Maritime Organization: International Convention for the Safety of Life at Sea, 1974, as amended; the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978; Assembly resolution A481(XII) (1981) on Principles of Safe Manning; Assembly resolution A741(18) (1993) on the International Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code); and Assembly resolution A772(18) (1993) on Fatigue Factors in Manning and Safety, and

Recalling the entry into force of the United Nations Convention on the Law of the Sea, 1982, on 16 November 1994, and

Having decided upon the adoption of certain proposals with regard to the revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958, and the Wages, Hours of Work and Manning (Sea) Recommendation, 1958, which is the second item of the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts, this ... day of ... of the year one thousand nine hundred and ninety-six, the following Convention, which may be cited as the Seafarers' Hours of Work and Manning of Ships Convention (Revised), 1996:

PART I. SCOPE AND DEFINITIONS

Article 1

1. This Convention applies to every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member for which the Convention is in force and is ordinarily engaged in commercial maritime operations. For the purpose of the Convention, a ship that is on the register of two Members is deemed to be registered in the territory of the Member whose flag it flies, except to the extent that the other Member retains jurisdiction over the ship.

PROPOSED TEXTS

(French version)

The following are the French versions of (A) the proposed Convention concerning seafarers' hours of work and the manning of ships and (B) the proposed Recommendation concerning seafarers' wages and hours of work and manning, which are submitted as a basis for a single discussion at the 84th (Maritime) Session of the Conference as the second item of the agenda.

A. Projet de convention concernant la durée du travail des gens de mer et les effectifs des navires

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le ... 1996, en sa quatre-vingt-quatrième session;

Notant les dispositions de la convention sur la marine marchande (normes minima), 1976;

Rappelant les dispositions pertinentes des instruments ci-après de l'Organisation maritime internationale: la Convention internationale pour la sauvegarde de la vie humaine en mer, 1974, telle qu'amendée; la Convention internationale sur les normes de formation des gens de mer, de délivrance des brevets et de veille, 1978; la résolution A 481 (XII) (1981) de l'Assemblée de cette organisation sur les principes à observer pour déterminer les effectifs en fonction de la sécurité; sa résolution A 741 (18) (1993) sur le Code international de gestion pour la sécurité de fonctionnement des navires et pour la prévention de la pollution (code ISM), et sa résolution A 772 (18) (1993) sur les facteurs de fatigue des effectifs et la sécurité;

Rappelant l'entrée en vigueur, en date du 16 novembre 1994, de la Convention des Nations Unies sur le droit de la mer, 1982;

Après avoir décidé d'adopter diverses propositions relatives à la révision de la convention sur les salaires, la durée du travail à bord et les effectifs (révisée), 1958, et de la recommandation sur les salaires, la durée du travail à bord et les effectifs, 1958, question qui constitue le deuxième point à l'ordre du jour de la session;

Après avoir décidé que ces propositions prendraient la forme d'une convention internationale,

adopte, ce ... jour de ... mil neuf cent quatre-vingt-seize, la convention ci-après, qui sera dénommée Convention sur la durée du travail des gens de mer et les effectifs des navires (révisée), 1996.

PARTIE I. CHAMP D'APPLICATION ET DÉFINITIONS

Article 1

1. La présente convention s'applique à tout navire de mer, de propriété publique ou privée, qui est immatriculé dans le territoire d'un Membre pour lequel la convention est en vigueur et qui est normalement affecté à des opérations maritimes commerciales. Aux fins de la convention, un navire qui est immatriculé dans le territoire de deux Membres est considéré comme étant immatriculé dans le territoire de celui dont il bat le pavillon sauf dans la mesure où l'autre Membre continue d'exercer sa juridiction sur le navire.

2. To the extent it deems practicable, after consulting the representative organizations of fishing vessel owners and fishermen, the competent authority shall apply the provisions of the Convention to commercial maritime fishing.

3. In the event of doubt as to whether or not any ships are to be regarded as engaged in commercial maritime operations or commercial maritime fishing for the purpose of the Convention, the question shall be determined by the competent authority after consulting the organizations of shipowners, seafarers and fishermen concerned.

4. The Convention does not apply to wooden vessels of traditional build such as dhows and junks.

Article 2

For the purpose of the Convention:

(a) the term "competent authority" means the minister, government department or other authority having power to issue regulations, orders or other instructions having the force of law in respect of seafarers' hours of work or rest or the manning of ships;

(b) the term "hours of work" means time during which a seafarer is required to do work on account of the ship;

(c) the term "hours of rest" means time outside hours of work; this term does not include short breaks;

(d) the term "seafarer" means any person defined as such by national laws or regulations or collective agreements who is employed or engaged in any capacity on board a seagoing ship to which the Convention applies;

(e) the term "shipowner" means the owner of the ship or the ship operator or the employer or any other person or organization, such as the manager or the bareboat charterer, who is accountable for the operation of the ship and for compliance with provisions which give effect to the Convention.

Article 3

The competent authority, after consulting the organizations of shipowners and seafarers concerned, shall determine how the following activities shall be treated with respect to hours of work and hours of rest:

(a) musters, fire-fighting and lifeboat drills and drills prescribed by national laws and regulations and by international instruments;

(b) activities required by the master for the safety of the ship, persons on board and cargo when the ship is in danger;

(c) activities required by the master for the purpose of giving assistance to other ships or persons in distress at sea[; and]

[(d) periods of responsibility such as when a machinery space is unattended but an engineer is on call].

2. Dans la mesure où, après consultation des organisations représentatives des armateurs à la pêche et des pêcheurs, l'autorité compétente considère que cela est réalisable, elle appliquera les dispositions de la convention à la pêche maritime commerciale.

3. En cas de doute sur la question de savoir si un navire doit être considéré comme affecté à des opérations maritimes commerciales ou à la pêche maritime commerciale aux fins de la convention, la question sera réglée par l'autorité compétente après consultation des organisations d'armateurs, de marins et de pêcheurs intéressées.

4. La convention ne s'applique pas aux bateaux en bois de construction traditionnelle, tels que les dhows ou les jonques.

Article 2

Aux fins de la convention:

a) l'expression «autorité compétente» désigne le ministre, le service gouvernemental ou toute autre autorité habilitée à édicter des règlements, arrêtés ou autres instructions ayant force obligatoire en matière de durée du travail ou d'heures de repos des gens de mer, ou d'effectifs des navires;

b) l'expression «durée du travail» désigne le temps durant lequel un marin est tenu d'effectuer un travail pour le navire;

c) l'expression «heures de repos» désigne le temps qui n'est pas compris dans la durée du travail; cette expression n'inclut pas les interruptions de courte durée;

d) les termes «gens de mer» ou «marins» désignent les personnes définies comme tels par la législation nationale ou par les conventions collectives qui sont employées ou engagées, à quelque titre que ce soit, à bord d'un navire de mer auquel la convention s'applique;

e) le terme «armateur» désigne le propriétaire du navire, l'exploitant du navire, l'employeur ou toute autre personne ou organisation telle que le gérant ou l'affréteur en coque nue qui assume la responsabilité de l'exploitation du navire, et du respect des dispositions donnant effet à la convention.

Article 3

La question de savoir comment les activités suivantes doivent être traitées du point de vue de la durée de travail ou des heures de repos sera réglée par l'autorité compétente, après consultation des organisations d'armateurs et de gens de mer intéressées:

a) les appels, exercices d'incendie et exercices d'évacuation, ainsi que les exercices prescrits par la législation nationale et par les instruments internationaux;

b) les activités requises par le capitaine en vue d'assurer la sécurité du navire, des personnes à bord et de la cargaison lorsque le navire est en danger;

c) les activités requises par le capitaine en vue de porter secours à d'autres navires ou à des personnes en détresse en mer;

[*d)* les périodes d'astreinte par exemple lorsque, la salle des machines étant sans présence humaine, le mécanicien est de garde].

PART II. SEAFARERS' HOURS OF WORK

Article 4

A Member which ratifies the Convention shall, within the limits set out in Article 6, fix either a maximum number of hours of work which shall not be exceeded in a given period of time, or a minimum number of hours of rest which shall be provided in a given period of time.

Article 5

The normal hours of work for seafarers shall be based on an eight-hour day with one day of rest per week and rest on public holidays. However, this shall not prevent collective agreements from fixing seafarers' normal hours of work on a different basis.

Article 6

1. The limits on hours of work or rest shall be as follows:

(a) maximum hours of work shall not exceed:

(i) 14 hours in any 24-hour period;

(ii) 72 hours in a week; [and]

[(iii) 130 hours in a two-week period]; or

(b) minimum hours of rest shall not be less than:

(i) ten hours in any 24-hour period[; and]

[(ii) 84 hours in a week].

2. Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours.

3. National laws or regulations or collective agreements may permit exceptions to be made to the limits set out in this Article to take account of the frequency and length of leave periods, the granting of compensatory leave and special situations such as those of seafarers who work aboard ships on short voyages as defined by the competent authority and of watchstanding seafarers.

Article 7

A Member which ratifies the Convention shall ensure that no seafarer under 18 years of age shall work at night. For the purpose of this Article, "night" shall mean a period of at least nine consecutive hours, including the interval from midnight to 5 a.m. This provision need not be applied when the effective training of young seafarers between the ages of 16 and 18 in accordance with established programmes and schedules would be impaired.

Article 8

Nothing in the Convention shall be deemed to impair the right of the master of a ship to require a seafarer to perform any work necessary for the immediate safety of the ship or for the assistance of persons in distress at sea.

PARTIE II. DURÉE DU TRAVAIL DES GENS DE MER

Article 4

Tout Membre qui ratifie la convention doit fixer soit le nombre maximum d'heures de travail qui ne devra pas être dépassé dans une période donnée, soit le nombre minimum d'heures de repos qui devra être accordé dans une période donnée, dans les limites indiquées à l'article 6.

Article 5

La norme pour la durée normale du travail pour les gens de mer sera établie par référence à une journée de huit heures avec un jour de repos par semaine, plus les jours fériés, étant entendu que rien n'empêche les conventions collectives de fixer cette durée sur une base différente.

Article 6

1. Les limites des heures de travail ou de repos doivent être établies comme suit:

a) le nombre maximum d'heures de travail ne doit pas dépasser:

i) 14 heures par période de 24 heures;

ii) 72 heures par semaine;

[iii) 130 heures par période de deux semaines]; ou

b) le nombre minimum d'heures de repos ne doit pas être inférieur à:

i) dix heures par période de 24 heures;

[ii) 84 heures par semaine].

2. Les heures de repos ne peuvent être scindées en plus de deux périodes, dont l'une d'une durée d'au moins six heures, et l'intervalle entre deux périodes consécutives de repos ne doit pas dépasser 14 heures.

3. Des dérogations aux limites fixées ci-dessus peuvent être autorisées en vertu de la législation nationale ou des conventions collectives pour tenir compte de la fréquence et de la durée des périodes de congés, de l'octroi de congé compensatoire et de situations particulières telles que celles des marins travaillant à bord de navires affectés à des voyages de courte durée tels qu'ils peuvent être définis par l'autorité compétente et des marins de quart.

Article 7

Tout Membre qui ratifie la convention doit veiller à ce qu'aucun marin de moins de 18 ans ne travaille la nuit. Aux fins de cet article, le terme "nuit" doit signifier neuf heures consécutives au moins, y compris une période se situant entre minuit et cinq heures du matin. La présente disposition pourra ne pas s'appliquer lorsque la formation effective des jeunes marins âgés de 16 à 18 ans, conformément aux programmes et calendriers établis, s'en trouverait affectée.

Article 8

Rien dans la convention n'est censé affecter le droit du capitaine d'un navire d'exiger d'un marin tout travail nécessaire à la sécurité immédiate du navire ou pour porter secours à des personnes en détresse en mer.

Article 9

1. A Member which ratifies the Convention shall require the maintenance of records of seafarers' hours of work or of their hours of rest.

2. The Member shall determine the procedures for keeping such records and shall specify:

(a) the form and content of the records;

(b) the precise intervals at which the data are to be recorded;

(c) the itemizing of hours of work and hours of rest relating to activities listed in Article 3;

(d) the endorsing of the records by the master, or a person authorized by the master, and by the seafarer;

(e) the provision to the seafarer of a copy of the records pertaining to him or her;

(f) the minimum period of retention of the records on the ship and of the availability of the records for inspection by the competent authority;

(g) the transmission of a copy of the records to, and the minimum period of retention by, the shipowner; and

(h) the manner in which electronic means may be used, where appropriate, for the above.

Article 10

The competent authority shall examine the records referred to in Article 9, at appropriate intervals, to monitor compliance with the provisions governing hours of work or hours of rest that give effect to the Convention.

Article 11

If the records or other evidence indicate infringement of provisions governing hours of work or hours of rest, the competent authority shall require that measures, including the revision of the manning of the ship, are taken so as to avoid future infringements.

PART III. MANNING OF SHIPS

Article 12

1. Every ship to which the Convention applies shall be sufficiently, safely and efficiently manned, in accordance with the minimum safe manning document issued by the competent authority.

2. When determining, approving or revising manning levels, the competent authority shall take into account:

(a) the need to avoid or minimize, as far as practicable, excessive hours of work, to ensure sufficient rest and to limit fatigue; and

(b) the international instruments identified in the Preamble.

Article 9

1. Tout Membre qui ratifie la convention doit prévoir que des registres des heures de travail des marins ou de leurs heures de repos doivent être tenus.

2. Il doit fixer les modalités de tenue de ces registres et spécifier:

a) leur forme et leur contenu;

b) les intervalles précis auxquels les données doivent y être consignées;

c) le détail des heures de travail et des heures de repos en ce qui concerne les activités énumérées à l'article 3;

d) l'émargement des registres par le capitaine, ou par une personne autorisée par ce dernier, et par le marin;

e) la remise au marin d'un extrait des registres le concernant;

f) la durée minimale pendant laquelle les registres doivent être conservés à bord du navire et être disponibles aux fins d'inspection par l'autorité compétente;

g) la transmission d'une copie des registres à l'armateur et la durée minimale pendant laquelle ce dernier devrait la conserver;

h) la manière selon laquelle des procédés électroniques peuvent, le cas échéant, être utilisés aux fins énoncées ci-dessus.

Article 10

L'autorité compétente doit vérifier, à des intervalles appropriés, les registres visés à l'article 9 afin de s'assurer que les dispositions relatives aux heures de travail et aux heures de repos donnant effet à la convention sont respectées.

Article 11

S'il résulte des registres ou d'autres faits établis que les dispositions relatives aux heures de travail et aux heures de repos ne sont pas respectées, l'autorité compétente doit s'assurer que des mesures sont prises, y compris la révision des effectifs du navire, afin d'éviter que les infractions ne se répètent.

PARTIE III. EFFECTIFS DES NAVIRES

Article 12

1. Tout navire auquel s'applique la convention doit avoir à bord un équipage suffisant en nombre et en qualité pour garantir la sécurité, conformément au document spécifiant les effectifs minima de sécurité établis par l'autorité compétente.

2. Pour déterminer, approuver ou réviser les effectifs d'un navire, l'autorité compétente doit tenir compte:

a) de la nécessité d'éviter ou de restreindre, dans toute la mesure possible, une durée du travail excessive, d'assurer un repos suffisant et de limiter la fatigue;

b) des instruments internationaux cités dans le préambule.

PART IV. RESPONSIBILITIES OF MASTERS AND SHIPOWNERS

Article 13

The master shall take all necessary steps to ensure that the seafarers' hours of work and rest, and the manning of the ship, are in compliance with obligations under the Convention. The shipowner shall ensure that the master is provided with the necessary resources for this purpose.

PART V. APPLICATION

Article 14

A Member which ratifies the Convention shall be responsible for the application of its provisions by means of laws or regulations, except where effect is given by collective agreements, arbitration awards or court decisions.

Article 15

A Member which ratifies the Convention shall:

(a) take all necessary measures, including the provision of appropriate sanctions and corrective measures, to ensure the effective enforcement of the provisions of the Convention;

(b) have appropriate inspection services to supervise the application of the measures taken in pursuance of the Convention and provide them with the necessary resources for this purpose; and

(c) after consulting shipowners' and seafarers' organizations, have procedures to investigate complaints relating to any matter contained in the Convention.

PART VI. FINAL PROVISIONS

Article 16

This Convention revises the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958; the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949; the Wages, Hours of Work and Manning (Sea) Convention, 1946; and the Hours of Work and Manning (Sea) Convention, 1936. All the above-listed Conventions shall cease to be open to ratification by a Member as from the date the present Convention has come into force.

Article 17

The Convention shall come into force six months after the date on which the ratifications of five Members, three of which each have at least 1 million gross tonnes of shipping, have been registered with the Director-General of the International Labour Office.

PARTIE IV. RESPONSABILITÉS DE L'ARMATEUR ET DU CAPITAINE

Article 13

Le capitaine doit prendre toutes les mesures nécessaires pour que les heures de travail et les heures de repos des marins, ainsi que les effectifs du navire, soient conformes aux obligations résultant de la convention et l'armateur doit s'assurer que le capitaine dispose des ressources nécessaires à cet effet.

PARTIE V. APPLICATION

Article 14

Tout Membre qui ratifie la convention s'engage à en appliquer les dispositions par voie de législation nationale, à moins qu'il ne leur soit donné effet par voie de conventions collectives, de sentences arbitrales ou de décisions judiciaires.

Article 15

Tout Membre qui ratifie la convention doit:

a) prendre toutes les mesures propres à garantir l'application effective de ses dispositions et prévoir notamment des sanctions et mesures correctrices appropriées;

b) disposer des services d'inspection appropriés pour contrôler l'application des mesures prises en vue de donner effet à la convention et les doter des ressources nécessaires à cet effet;

c) après consultation des organisations d'armateurs et de gens de mer, établir des procédures pour instruire les plaintes relatives à toute question couverte par la convention.

PARTIE VI. DISPOSITIONS FINALES

Article 16

La présente convention révise la convention sur les salaires, la durée du travail à bord et les effectifs (révisée), 1958, la convention sur les salaires, la durée du travail à bord et les effectifs (révisée), 1949, la convention sur les salaires, la durée du travail à bord et les effectifs, 1946, et la convention sur la durée du travail à bord et les effectifs, 1936. Toutes les conventions susmentionnées cesseront d'être ouvertes à la ratification à compter de la date de l'entrée en vigueur de la présente convention.

Article 17

La convention entrera en vigueur six mois après que les ratifications de cinq Membres, y compris trois dont la flotte marchande atteint un tonnage brut égal ou supérieur à un million de tonneaux, auront été enregistrées auprès du Directeur général du Bureau international du Travail.

B. Proposed Recommendation concerning seafarers' wages and hours of work and the manning of ships

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fourth Session on ... 1996, and

Noting the provisions of the Protection of Wages Convention, 1949; the Minimum Wage-Fixing Convention, 1970; the Seafarers' Annual Leave with Pay Convention, 1976; the Merchant Shipping (Minimum Standards) Convention, 1976; the Repatriation of Seafarers Convention (Revised), 1987; the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992; and the International Convention on Maritime Liens and Mortgages, 1993, and

Having decided upon the adoption of certain proposals with regard to the revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 and the Wages, Hours of Work and Manning (Sea) Recommendation, 1958, which is the second item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Seafarers' Hours of Work and Manning of Ships Convention (Revised), 1996,

adopts this ... day of ... of the year one thousand nine hundred and ninety-six, the following Recommendation, which may be cited as the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation (Revised), 1996:

I. Scope and definitions

1. (1) The Recommendation applies to every seagoing ship, whether publicly or privately owned, which is registered in the territory of the Member and is ordinarily engaged in commercial maritime operations.

(2) To the extent it deems practicable, after consulting the representative organizations of fishing vessel owners and fishermen, the competent authority should apply the provisions of the Recommendation to commercial maritime fishing.

(3) In the event of doubt as to whether or not any ships are to be regarded as engaged in commercial maritime operations or commercial maritime fishing for the purposes of the Recommendation, the question should be determined by the competent authority after consulting the organizations of shipowners, seafarers and fishermen concerned.

(4) The Recommendation does not apply to wooden vessels of traditional build such as dhows and junks.

2. For the purpose of the Recommendation:

(a) the term "basic pay or wages" means the pay for normal hours of work; this term does not include any additional remuneration such as payments for overtime worked, premiums, allowances, paid leave or benefits in kind;

(b) the term "competent authority" means the minister, government department or other authority having power to issue regulations, orders or other instructions having the force of law in respect of seafarers' wages, hours of work or rest or the manning of ships;

B. Projet de recommandation concernant les salaires et la durée du travail des gens de mer et les effectifs des navires

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le ... 1996, en sa quatre-vingt-quatrième session;

Notant les dispositions de la convention sur la protection des salaires, 1949, de la convention sur la fixation des salaires minima, 1970, de la convention sur les congés payés annuels (gens de mer), 1976, de la convention sur la marine marchande (normes minima), 1976, de la convention sur le rapatriement des marins (révisée), 1987, de la convention sur la protection des créances des travailleurs en cas d'insolvabilité de leur employeur, 1992, et de la Convention internationale de 1993 sur les privilèges et hypothèques maritimes;

Après avoir décidé d'adopter diverses propositions relatives à la révision de la convention sur les salaires, la durée du travail à bord et les effectifs, 1958, et de la recommandation sur les salaires, la durée du travail à bord et les effectifs, 1958, question qui constitue le deuxième point à l'ordre du jour de la session;

Après avoir décidé que ces propositions prendraient la forme d'une recommandation complétant la convention sur la durée du travail des gens de mer et les effectifs des navires (révisée), 1996,

adopte, ce ... jour de ... mil neuf cent quatre-vingt-seize, la recommandation ci-après, qui sera dénommée Recommandation sur les salaires et la durée du travail des gens de mer et les effectifs des navires, 1996.

I. Champ d'application et définitions

1. (1) La recommandation s'applique à tout navire de mer, de propriété publique ou privée, qui est immatriculé dans le territoire du Membre et qui est normalement affecté à des opérations maritimes commerciales.

(2) Dans la mesure où, après consultation des organisations représentatives des armateurs à la pêche et des pêcheurs, l'autorité compétente considère que cela est réalisable, elle devrait appliquer les dispositions de la recommandation à la pêche maritime commerciale.

(3) En cas de doute sur la question de savoir si un navire devrait être considéré comme affecté à des opérations maritimes commerciales ou à la pêche maritime commerciale aux fins de la recommandation, la question devrait être réglée par l'autorité compétente après consultation des organisations d'armateurs, de marins et de pêcheurs intéressées.

(4) La recommandation ne s'applique pas aux bateaux en bois de construction traditionnelle, tels que les dhows ou les jonques.

2. Aux fins de la recommandation:

a) les termes "salaire ou solde de base" désignent le salaire perçu pour une durée normale du travail. Ils n'incluent pas les rémunérations additionnelles, telles que le paiement d'heures supplémentaires, les primes ou allocations, les congés payés et les avantages en nature;

b) l'expression "autorité compétente" désigne le ministre, le service gouvernemental ou toute autre autorité habilitée à édicter des règlements, arrêtés ou autres instructions ayant force obligatoire en matière de salaires, de durée du travail ou d'heures de repos des gens de mer ou d'effectifs des navires;

(c) the term "consolidated wage" means the pay for work performed during normal hours of work and for work which is expected to be performed on a regular basis in excess of the normal hours of work;

(d) the term "hours of work" means time during which a seafarer is required to do work on account of the ship;

(e) the term "hours of rest" means time outside hours of work; this term does not include short breaks;

(f) the term "seafarer" means any person defined as such by national laws or regulations or collective agreements who is employed or engaged in any capacity on board a seagoing ship to which the Recommendation applies; and

(g) the term "shipowner" means the owner of the ship or the ship operator or the employer or any other person or organization such as the manager or the bareboat charterer who is accountable for the operation of the ship.

I. SEAFARERS' WAGES

3. For seafarers whose remuneration includes separate compensation for overtime worked:

(a) for the purpose of calculating wages, the normal hours of work at sea and in port should not exceed eight hours per day;

(b) time worked in excess of the normal hours of work per day should be regarded as overtime;

[the following alternative texts are proposed for a new subparagraph (c):

(c) for the purpose of calculating overtime, the basic pay or wages should cover 40 hours per week or 173 hours per month;

or

(c) for the purpose of calculating overtime, the number of normal hours per week or per month should be prescribed by national laws or regulations or by collective agreement;]

[(d)] the rate or rates of compensation for overtime, which should not be less than [one and one-quarter times] the basic pay or wages per hour, should be prescribed by national laws or regulations or by collective agreement; and

[(e)] records of all overtime worked should be maintained by the master or a person assigned by the master and endorsed by the seafarer at regular intervals.

4. For seafarers whose wages are fully or partially consolidated:

(a) records should be maintained by the master of hours of work or hours of rest for all seafarers to ensure the observance of maximum hours of work or minimum rest periods;

(b) the collective agreement, articles of agreement, contract of employment and letter of engagement should specify clearly the amount of remuneration payable to the seafarer and where appropriate the number of hours of work expected of the seafarer in return for this remuneration, and any additional allowances which might be due in addition to the consolidated wage, and in which circumstances;

c) les termes «salaire forfaitaire» désignent la rémunération au titre du travail effectué pendant les heures normales de travail et pendant les heures que le marin est censé devoir effectuer de manière régulière au-delà des heures normales de travail;

d) l'expression "durée du travail" désigne le temps durant lequel un marin est tenu d'effectuer un travail pour le navire;

e) l'expression "heures de repos" désigne le temps qui n'est pas compris dans la durée du travail; cette expression n'inclut pas les interruptions de courte durée;

f) les termes "gens de mer" ou "marins" désignent les personnes définies comme tels par la législation nationale ou les conventions collectives qui sont employées ou engagées, à quelque titre que ce soit, à bord d'un navire de mer auquel la recommandation s'applique;

g) l'expression "armateur" désigne le propriétaire du navire, l'exploitant du navire, l'employeur ou toute autre personne ou organisation telle que le gérant ou l'affréteur en coque nue qui assume la responsabilité de l'exploitation du navire.

II. Salaires des gens de mer

3. Pour les gens de mer qui sont compensés séparément pour les heures supplémentaires effectuées:

a) la durée normale du travail en mer et au port ne devrait pas, aux fins de calcul du salaire, être supérieure à huit heures par jour;

b) toute heure de travail effectuée au-delà des heures normales de travail devrait être considérée comme heure supplémentaire;

[*les deux textes suivants sont proposés au choix comme nouvel alinéa c):*

c) aux fins du calcul des heures supplémentaires, le salaire de base devrait correspondre à 40 heures par semaine, ou 173 heures par mois;

ou

c) aux fins du calcul des heures supplémentaires, la durée normale du travail par semaine ou par mois devrait être fixée par la législation nationale ou par convention collective;]

[d)] le taux ou les taux de compensation pour les heures supplémentaires, qui devraient dans tous les cas comporter une majoration d'au moins [25 pour cent] par rapport au taux horaire du salaire ou de la solde de base, devraient être prescrits par la législation nationale ou par convention collective;

[e)] le capitaine, ou toute personne désignée par lui, devrait tenir les registres de toutes les heures supplémentaires effectuées; ces registres devraient être émargés par le marin à intervalles réguliers.

4. Pour les gens de mer dont le salaire est intégralement ou partiellement forfaitaire:

a) le capitaine devrait tenir les registres des heures de travail et des heures de repos de tous les marins pour assurer le respect de la durée maximale du travail ou du nombre minimal d'heures de repos;

b) les conventions collectives, les contrats d'engagement, les contrats de travail ainsi que la lettre d'engagement devraient spécifier clairement le montant de la rémunération payable au marin et, selon le cas, le nombre d'heures de travail censées être effectuées par lui pour cette rémunération, ainsi que toutes allocations supplémentaires qui pourraient lui être dues en sus du salaire forfaitaire et dans quels cas;

(c) the hourly rate for hours worked in excess of those covered by the consolidated wage should be no less than [one and one-quarter times] the hourly rate corresponding to the consolidated wage; and

(d) remuneration for that portion of the fully or partially consolidated wage representing the normal hours of work as defined in Paragraph 3(a) should be no less than the applicable minimum wage.

5. National laws or regulations or collective agreements may provide for compensation for overtime or for work performed on the weekly day of rest and on public holidays by at least equivalent time off duty and off the ship or additional leave in lieu of remuneration or any other compensation so provided.

6. National laws and regulations adopted after consulting the representative organizations of seafarers and shipowners or, as appropriate, collective agreements should take into account the following principles:

(a) equal remuneration for work of equal value should apply to all seafarers employed upon the same ship without discrimination based upon race, colour, sex, religion, political opinion, national extraction or social origin;

(b) the articles of agreement or other agreement specifying the applicable wages or wage rates should be carried on board the ship; information on the amount of wages or wage rates should be made available to each seafarer, either by providing at least one signed copy of the relevant information to the seafarer in a language which the seafarer understands, or by posting a copy of the agreement in a place accessible to the crew or by some other appropriate means;

(c) wages should be paid in legal tender; where appropriate, they may be paid by bank transfer, bank cheque, postal cheque or money order;

(d) wages should be paid monthly or at some other regular interval, and on termination of engagement all remuneration due should be paid without undue delay;

(e) wages should be paid directly to the seafarer or to the seafarer's designated bank account unless he or she requests otherwise in writing;

(f) subject to subparagraph (g), the shipowner should impose no limit on the seafarer's freedom to dispose of his or her remuneration;

(g) deduction from remuneration should be permitted only if:

(i) there is an express provision therefor in national laws or regulations or in an applicable collective agreement;

(ii) the seafarer has been informed, in the manner deemed most appropriate by the competent authority, of the conditions for such deductions; and

(iii) they do not in total exceed the limit that may have been established by national laws or regulations or collective agreements or court decisions for making such deductions;

(h) no deductions should be made from a seafarer's remuneration in respect of obtaining or retaining employment;

(i) the competent authority should have the power to inspect stores and services provided on board ship to ensure that fair and reasonable prices are applied for the benefit of the seafarers concerned; and

c) le taux horaire pour les heures effectuées au-delà des heures correspondant au salaire forfaitaire devrait comporter une majoration d'au moins [25 pour cent] par rapport au taux horaire correspondant audit salaire forfaitaire;

d) la rémunération de la partie du salaire intégralement ou partiellement forfaitaire qui correspond à la durée normale du travail telle que définie au paragraphe 3 *a)* ne devrait pas être inférieure au salaire minimum applicable.

5. La législation nationale ou les conventions collectives pourraient prévoir que les heures supplémentaires ou le travail effectué le jour de repos hebdomadaire ou les jours fériés soient compensés par une période au moins équivalente d'exemption de service et de présence à bord ou par un congé supplémentaire en lieu et place d'une rémunération ou par toute autre compensation qu'elles pourraient prévoir.

6. La législation nationale établie après consultation des organisations représentatives des armateurs et des gens de mer ou, selon le cas, les conventions collectives devraient tenir compte des principes suivants:

a) le principe "à travail égal, salaire égal" devrait être appliqué à tous les marins travaillant sur le même navire, sans discrimination fondée sur la race, la couleur, le sexe, la religion, les opinions politiques, l'ascendance nationale ou l'origine sociale;

b) le contrat d'engagement ou tout autre accord spécifiant le montant ou le taux des salaires devrait être disponible à bord; des informations sur le montant des salaires ou leurs taux devraient être tenues à la disposition du marin, soit en lui remettant au moins une copie signée de l'information correspondante dans une langue qu'il comprenne, en plaçant une copie du contrat à un endroit accessible à l'équipage, ou par tout autre moyen approprié;

c) les salaires devraient être payés dans une monnaie ayant cours légal, le cas échéant par transfert bancaire, chèque bancaire ou postal ou ordre de paiement;

d) les salaires devraient être payés mensuellement ou à un autre intervalle régulier et, à la cessation de la relation d'emploi, toute rémunération restant due devrait être payée sans délai indu;

e) les salaires devraient être versés directement au marin ou sur le compte bancaire désigné par lui, sauf s'il a demandé par écrit qu'il en soit autrement;

f) sous réserve des dispositions de l'alinéa *g)*, l'armateur ne devrait restreindre en aucune manière la liberté du marin de disposer de son salaire;

g) les retenues sur salaires ne devraient être autorisées que si:

i) cela est expressément prévu par la législation nationale ou une convention collective applicable;

ii) le marin a été informé, de la façon que l'autorité compétente considère comme la plus appropriée, des conditions dans lesquelles ces retenues sont opérées;

iii) elles ne dépassent pas au total la limite établie à cette fin par la législation nationale, les conventions collectives ou les décisions judiciaires;

h) aucune retenue ne devrait être effectuée sur la rémunération du marin pour l'obtention ou la conservation d'un emploi;

i) l'autorité compétente devrait être habilitée à inspecter les magasins et services disponibles à bord afin de s'assurer qu'ils pratiquent des prix justes et raisonnables dans l'intérêt des marins concernés;

(j) to the extent that seafarers' claims for wages and other sums due in respect of their employment are not secured in accordance with the provisions of the International Convention on Maritime Liens and Mortgages, 1993, such claims should be protected in accordance with the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992.

7. A Member should, after consulting with shipowners' and seafarers' organizations, have procedures to investigate complaints relating to any matter contained in the Recommendation. [Representative organizations of shipowners and seafarers should participate in the operation of such procedures.]

III. Minimum wages

8. (1) Without prejudice to the principle of free collective bargaining, a Member should, after consulting representative organizations of shipowners and seafarers, establish procedures for determining minimum wages for seafarers. Representative organizations of shipowners and seafarers should participate in the operation of such procedures.

(2) When establishing such procedures and in fixing minimum wages, due regard should be given to international labour standards concerning minimum wage fixing, as well as the following principles:

(a) the level of minimum wages should take into account the nature of maritime employment and seafarers' normal hours of work;

(b) the level of minimum wages should be adjusted to take into account changes in the cost of living and in the needs of seafarers.

(3) The competent authority should ensure:

(a) by means of a system of supervision and sanctions, that wages are paid at not less than the rate or rates fixed; and

(b) that any seafarer who has been paid at a rate lower than the minimum wage is enabled to recover, by an inexpensive and expeditious judicial or other procedure, the amount by which he or she has been underpaid.

IV. Minimum monthly basic pay or wage figure for able seamen

9. For the purpose of this Part, the term "able seaman" means any seafarer who, by national laws or regulations or by collective agreement, is deemed to be competent to perform any duty which may be required of a rating serving in the deck department, other than the duties of a leading or specialist rating.

10. The basic pay or wages for a calendar month of service for an able seaman should be no less than US$385 as of 1 January 1995 or any updated figure set by the Joint Maritime Commission or another body authorized by the Governing Body of the International Labour Office. Upon a decision of the Governing Body, the Director-General of the ILO shall notify the updated figure to the Members of the Organization.

j) dans la mesure où les créances des travailleurs relatives à leurs salaires et autres sommes dues au titre de leur emploi ne sont pas garanties conformément à la Convention internationale de 1993 sur les privilèges et hypothèques maritimes, ces créances devraient être protégées par un privilège conformément à la convention sur la protection des créances des travailleurs en cas d'insolvabilité de leur employeur, 1992.

7. Tout Membre devrait, après consultation des organisations d'armateurs et de gens de mer, instituer des procédures pour instruire les plaintes relatives à toute question couverte par cette recommandation. [Des organisations représentatives des armateurs et des gens de mer devraient participer à la mise en œuvre de ces procédures.]

III. Salaires minima

8. (1) Sans préjudice du principe de la libre négociation collective, tout Membre devrait établir, après consultation des organisations représentatives des armateurs et des gens de mer, des procédures de fixation des salaires minima pour les gens de mer. Des organisations représentatives des armateurs et des gens de mer devraient participer au fonctionnement de ces procédures.

(2) En établissant de telles procédures et en fixant les salaires minima, il devrait être tenu compte des normes internationales du travail relatives aux salaires minima ainsi que des principes suivants:

a) le niveau des salaires minima devrait tenir compte de la nature de l'emploi maritime et de la durée normale du travail des gens de mer;

b) le niveau des salaires minima devrait être adapté à l'évolution du coût de la vie et aux besoins des marins.

(3) L'autorité compétente devrait:

a) disposer d'un système de contrôle et de sanctions pour s'assurer que les salaires versés ne sont pas inférieurs aux taux établis;

b) s'assurer que tout marin qui a été rémunéré à un taux inférieur au taux minimum puisse recouvrer, par une procédure judiciaire accélérée et peu onéreuse, ou toute autre procédure, le montant de la somme qui lui reste due.

IV. Montant du salaire ou de la solde de base mensuels minima des matelots qualifiés

9. Aux fins des dispositions qui suivent, l'expression "matelot qualifié" désigne tout marin qui, en vertu de la législation nationale ou d'une convention collective, est censé posséder la compétence professionnelle nécessaire pour remplir toute tâche dont l'exécution peut être exigée d'un membre du personnel subalterne affecté au service du pont autre que celle d'un membre du personnel subalterne dirigeant ou spécialisé.

10. Le salaire ou la solde de base pour un mois civil de service d'un matelot qualifié ne devrait pas être inférieur à 385 dollars des Etats-Unis à compter du 1er janvier 1995 ou à tout autre montant révisé établi par la Commission paritaire maritime ou par un autre organe autorisé par le Conseil d'administration du Bureau international du Travail à le faire. Sur décision du Conseil d'administration, le Directeur général du BIT notifiera le montant révisé aux Membres de l'Organisation.

11. Nothing in this Part should be deemed to prejudice arrangements agreed between shipowners or their organizations and seafarers' organizations with regard to the regulation of standard minimum terms and conditions of employment applicable in accordance with national laws and regulations governing wages.

12. This Recommendation supersedes the Wages, Hours of Work and Manning (Sea) Recommendation, 1958.

11. Rien dans cette partie de la recommandation ne devrait être interprété comme affectant les accords entre les armateurs, ou leurs organisations, et les organisations de gens de mer, en ce qui concerne la réglementation des termes et conditions minima d'emploi applicables conformément à la législation nationale concernant les salaires.

12. La présente recommandation remplace la recommandation sur les salaires, la durée du travail à bord et les effectifs, 1958.

Annex

Extracts from studies concerning hours of work and hours of rest

Extracts from the Executive Summary of the Review and Revision of the Safe Manning Regulations commissioned by Transport Canada (1994)

This report describes the project entitled: Safe Manning Regulations: Watch Standards, commissioned by the Transportation Development Centre on behalf of the Canadian Coast Guard in response to a recommendation in the Brander-Smith report (1990) which found that the overwhelming majority of incidents are caused by human error, and went on to express concern with the effect of fatigue on human performance for masters, officers and crew.

The project was restricted to consideration of fatigue. It commenced in January 1994 and was completed in December 1994.

The goal of the project was to make recommendations for changes to [Canada's] Safe Manning Regulations. To this end the following tasks were completed:

- A review of current regulations.
- A review of the scientific literature concerning hours of work, hours of rest, time of day and shift work, focusing primarily on research relating to marine operations.
- A review of operational constraints in different sectors of the Canadian shipping industry, as determined from four workshops held in different parts of Canada attended by representatives of the shipping industry.

Based on these reviews and comparisons between their findings, revisions to the current regulations were developed and recommendations made. Finally, the scope of the investigation in terms of its limitations and the possible impact of the recommendations was reviewed.

After discussing the main findings of the literature review, other findings and recommendations for changes to Safe Manning Regulations, the report provided, in the **Report Overview, Summary of Part 2: Research:**

Report Overview, Summary of Part 2: Research:

[The] review of the literature points to the following conclusions that are applicable to shipping operations ...

1. After prolonged work, tasks are performed less efficiently and less accurately. Performance can be maintained for 12 hours without significant decrement but not for longer. Work should not be extended beyond 18 hours: after 18 hours' continuous work the worker should be given a rest period with an opportunity to sleep.
2. Performance can be maintained in prolonged work periods of 12 hours, with intervening rest, for three or four days. There is no research suggesting how long such a work schedule can be extended or how it might be shortened if work periods were longer than 12 hours.
3. In the short term of up to three days, the major rest period should allow for at least six hours' sleep in a 24-hour period. This requirement does not include any allocation for personal, recreational and social activities. There is no research suggesting how long this latter allocation should be.
4. In the longer term extending beyond three days, the rest periods should allow for a longer period of sleep of up to 7.5 hours within a 24-hour period. This sleep need not be taken within a single period but may be divided into two or more shorter periods.
5. Evidence suggests that it is not necessary for sleep to be taken in a single uninterrupted period in order to meet normal sleep requirements. Short sleep periods totalling as little as 15 minutes may reverse performance decrement. However, a work period spent on call should not be regarded as equivalent to a normal rest period.

6. Performance varies systematically with time of day. In general, performance is better for any given individual if work is done and sleep taken at the same time of day during each 24-hour period.
7. Watchkeeping schedules should be of a permanent, non-rotating design. Given that while the ship is at sea it is largely self-contained and isolated from distracting factors, evidence supporting rotating shifts seems inapplicable. Once assigned to a watch, individuals should be maintained on that watch, or should revert to it if operational conditions demand temporary diversions.
8. To the extent that some rotation of watches may be necessary, they should involve forward rotation not backward rotation. Individuals should find the times of beginning their work and rest periods delayed rather than anticipated. Overtime should be worked following a watch, not before it.
9. Forward rotation of watches may be appropriate if the ship makes a voyage across time zones in a westward direction. If the ship makes a voyage across time zones in an eastward direction, the ship should adopt the local time of the destination port on setting sail, at least for the purpose of establishing the watch system, and thus avoid the need to rotate watches.
10. In respect of other characteristics, there is insufficient evidence favouring one watchkeeping system over another. In particular, we see no convincing reason for favouring close systems in which work periods are temporally closer together with the consequence that one rest period is longer than the other, over other systems in which rest periods are of equal duration.

Study into hours of work, fatigue, and safety at sea "Brown Study"] — prepared by the Medical Research Council, Applied Psychology Unit, for the Shipping Policy and Registration Division of the United Kingdom Department of Transport (1989)

Extracts from *Guidance on the form that regulations should take*

Whilst one may be reasonably confident that regulations on hours of work at sea are justified by existing evidence in the scientific literature, combined with anecdotal evidence of fatigue experiences, there is little hard evidence on the precise form that such regulations should take. A few field studies of alternative watchkeeping systems have been conducted at sea, but mostly in warships. Extrapolation of findings from these studies to the merchant service is of doubtful validity, because of differences in operational conditions, motivation and manning provisions. It is, however, possible to establish a few basic principles for the design of regulations, based on the evidence reviewed in previous sections, as follows:

1. Regulations should prescribe a number of consecutive off-duty hours in each 24-hour period which can be taken as rest/sleep breaks, permitting both the "restitutive" and the "facultative" needs for sleep to be satisfactorily met. These needs will not be met unless crew members are allowed at least eight consecutive hours of uninterrupted rest per day: uninterrupted, that is, by the intrusion of actual duties, or by anxiety that they might be called upon to work in the event of equipment failure. If crew members are, in fact, to be able to have eight consecutive hours available for sleeping, the regulations should prescribe a greater number of consecutive off-duty hours; say, a minimum of ten hours in each 24-hour period.
2. If fatigue from prolonged working is to be minimized, the regulations should prescribe a maximum number of continuous duty hours before a break is taken. It is recommended that the absolute limit should be six hours on duty. The regulations should prescribe a rest break of at least one hour after each continuous duty period and should prohibit the commencement of such duty periods by personnel who have not had at least ten hours' rest immediately prior to commencement. These prior rest hours should not include any time spent in travelling to join ship.
3. If cumulative fatigue is to be prevented, the regulations should prescribe the maximum number of hours that may be worked in each 24-hour period. It is recommended that the absolute limit, including overtime, should be ten hours per day.

4. Prevention of cumulative fatigue also requires a limit to be set on the number of hours that may be worked per week. It is recommended that regulations should prescribe a maximum of 60 working hours per week.

5. Finally, the prevention of cumulative fatigue requires a limit to be set on the number of hours that can be worked per month, so that adequate rest breaks can be taken away from the ship. It is recommended that the regulations should prescribe a maximum of 200 working hours per month.

6. If the adverse effects of circadian rhythms on performance and quality of sleep are to be minimized, a limit must be set on the distribution of working hours over each 24-hour period. It is recommended that the regulations should prescribe a maximum period of 14 hours over which the permitted daily working hours may be distributed.

7. If the adverse effects of disrupted biological rhythms on performance and fatigue experiences are to be minimized, a limit must be set on day-to-day variations in scheduling of duty periods within the working day. It is recommended that the regulations should prescribe a maximum variation of two hours in the starting and finishing times of daily working hours from one day to the next.

8. The regulations will need to provide for exemption from the above constraints in the case of emergencies, where human life and/or the safety of the vessel is threatened. Such exemption will clearly need to be extended for a period after the end of the immediate emergency conditions, but it would be counterproductive for safety if this extension were excessively long (e.g. longer than the maximum period of continuous duty under normal operating conditions). It is therefore recommended that the regulations should prescribe a maximum period of six hours' continued exemption from the regulations, following the end of any emergency threatening human life or the safety of the vessel.

9. In order to monitor the adequacy of the regulations, it is clearly important to provide for the collection of data on relevant contributory factors in any accidents that occur at sea. It is therefore recommended that the regulations should require the names of all watchkeepers, together with full details of their work, rest and sleep schedules to be recorded, preserved for a period of at least three months, and made available to the official inspectorate following any reportable accident or serious incident.

10. It should be made a punishable offence for masters and employers not to comply with the regulations.

11. The regulations should apply to all seamen employed in navigational, engine-room and machinery watch duties on seagoing ships over some prescribed tonnage, registered in the United Kingdom. Consideration should also be given to extending application of the regulations to *masters* of such vessels. In the interests of safety at sea, it seems highly illogical to exempt from the regulations the principal decision taker, who has ultimate responsibility for the vessel, who is as susceptible to effects of fatigue as any other crew member, yet who is currently highly exposed to risks of sleep loss, sleep disturbance and disruption of biological rhythms and performance efficiency.

The Office has been advised by the United Kingdom Department of Employment of the follow-up to Professor Brown's Study:

[The study] was circulated in 1990 to a limited group of organizations representing owners and seafarers. Some of the study's recommendations appeared impractical, e.g. the suggested parameters would have prevented the normal three-watch system being operated. However, the study did provide a useful starting-point for considering how to regulate hours of work, and broad acceptance was reached that some form of regulation was necessary.

The eventual Merchant Shipping (Hours of Work) Regulations, 1995, incorporated Professor Brown's suggestion of a minimum rest period, although regulations specify seven hours in place of Professor Brown's suggested ten hours.

The regulations require the working hours of seagoing UK-registered vessels to be preplanned and recorded in a schedule of duties which, in addition to the seven hours' rest, must specify the maximum period of continuous watchkeeping, the minimum rest period between watches, and the total daily, weekly and monthly hours of work. All these categories were suggested by Professor Brown with the difference that he also prescribed the number of hours to be worked under each category, whereas the regulations

(apart from the prescribed seven hours' minimum rest) leave it up to ship operators to decide what is safe for any particular shipping operation.

The regulations also require that a copy of the schedule of duties is maintained on the ship together with a record of all deviations from its requirements which must be preserved for five years. This goes beyond Professor Brown's recommendation for the preservation of this information for three months.

The [notice] accompanying the regulations includes reference to the seriousness of irregular working hours as a contributory factor in fatigue causation and the importance of scheduling reasonably stable watchkeeping hours over a voyage which are important considerations raised by Professor Brown.

Generally, the regulations incorporate many of the principles identified by Professor Brown for controlling hours of work. The main departure from Professor Brown is that the regulations include very little prescriptive detail. The intention of the regulations is to make the owners and masters of individual ships responsible for ensuring that the hours worked comply with their assessment of what is safe for a particular shipping operation.

Study on shipboard crew fatigue, safety and reduced manning, prepared for the US Maritime Administration by the US Department of Transportation Research and Special Programmes Administration, Volpe National Transportation Systems Center, Office of Research and Analysis

Extracts from the recommendations

This study has identified clusters of factors which are likely to impact the development of fatigue in ships operating with smaller crews. The relevance and validity of these factors must be evaluated to develop better methods for determining under what conditions crew size reductions will impact fatigue.

It is recommended that case-studies be conducted of ships operating with crews which are greatly reduced as compared to current American-flag practice. These case-studies should provide information and data which will be very valuable to agencies, such as the US Coast Guard, which are charged with passing on proposed crew reductions. Compliance with the Oil Pollution Act of 1990 is likely to stimulate a variety of responses from various operators. Studies of alternative approaches to meeting the limits on working hours imposed by this law and evaluations of those which are most successful are also suggested.

Self-report techniques have been used successfully to detect, gauge and evaluate the presence of excessive workload, fatigue, and stress in military personnel. The results of this study indicate that self-report fatigue/stress/workload instruments could be adapted, developed and refined for use in merchant-marine operations.

Finally, while no objective, performance-based, fatigue measures suitable for shipboard use was identified in the research review conducted for this study, the use of one or more techniques currently in development or testing might yield valuable results. Further evaluation is recommended.

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